

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No.: 2018 CA 008715 B
Judge Fern F. Saddler
Next Event: Motions Hearing
Date: Mar. 6, 2019

**DISTRICT OF COLUMBIA'S OPPOSITION TO
DEFENDANT FACEBOOK, INC.'S MOTION TO DISMISS**

Dated: March 1, 2019

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INTRODUCTION

This consumer protection enforcement action arises out of Defendant Facebook, Inc.’s (“Facebook”) failure to protect the privacy of the hundreds of thousands of Washington, D.C. (“D.C.”) consumers to whom the company provides social networking services. In its Complaint, the District of Columbia (“District”) alleges that Facebook violated the D.C. Consumer Protection Procedures Act (“CPPA”) by making a variety of misleading statements or omissions to D.C. consumers about the security of the personal information that they provided to Facebook. Verifying the District’s allegations, Facebook’s CEO, Mark Zuckerberg, has publicly admitted that the company had “a responsibility to protect [consumers’] data” and that it had “breach[ed] the trust between Facebook and the people who share their data with us and expect us to protect it.”¹ Despite this admitted breach of trust, Facebook argues that this Court should close its doors to the D.C. Attorney General’s efforts to protect the numerous D.C. consumers with whom the company has elected to do business. Facebook’s position is simply inconsistent with the law and the facts.

In its Motion to Dismiss (“Motion”), Facebook advances three main arguments, none of which have merit. First, as to personal jurisdiction, this Court is unquestionably the right place for an enforcement action brought by the D.C. Attorney General asserting violations of District law arising from D.C. consumers’ use of Facebook’s social networking service. Facebook has admitted in sworn corporate filings that the company provides its social networking services “in the District of Columbia” and it concedes that it maintains “consumer contracts” with D.C. residents. Mot. at 1. Nearly half of all D.C. residents are Facebook consumers, and the District’s Complaint alleges that Facebook made unlawful misrepresentations and omissions to its vast D.C. consumer base in the course of monetizing their data into millions of dollars in advertising revenue. These extensive D.C.

¹ Mark Zuckerberg, Facebook Post (Mar 21, 2018), *available at* <https://www.facebook.com/zuck/posts/10104712037900071>.

contacts far exceed the “minimum contacts” required by the Constitution to establish personal jurisdiction.

Second, the District has stated a CCPA claim. The Complaint details how Facebook misled D.C. consumers by making false and deceptive statements about measures Facebook takes to protect consumers’ data. The CCPA renders statements unlawful trade practices when they misrepresent facts a consumer would find material. Whether statements are misleading or material are questions of fact. Facebook’s attempt to resolve them as a matter of law by attaching voluminous disclosures falls flat. Even if the District’s claims were limited to just Facebook’s disclosures (which they are not), those very disclosures make conflicting representations. That Facebook’s best evidence – its own carefully crafted “disclosures” – are facially inconsistent only confirms that a reasonable D.C. consumer would find the disclosures misleading.

Third, there is no reason to stay this case. As alleged in the Complaint, Facebook’s unlawful trade practices against D.C. consumers are continuing. Hardly a day goes by without further public reporting about Facebook’s continuing refusal to take the necessary steps to protect its users’ privacy.² Neither a federal multidistrict litigation (“MDL”) involving private class action claims nor an FTC investigation justify a delay of the D.C. Attorney General’s efforts to protect D.C. consumers from Facebook’s continuing unlawful trade practices. Facebook’s Motion should be entirely denied.

ALLEGATIONS IN THE DISTRICT’S COMPLAINT³

Facebook provides social networking services to users throughout the world, including hundreds of thousands of consumers in D.C. who use the service on a daily basis. Compl. ¶ 10. By using Facebook’s social networking service, consumers provide Facebook with their personal data,

² E.g., U.K. Parliament Digital, Culture, Media and Sport Comm., *Disinformation and “Fake News”*, 2017-19, H.C. 1791 (Feb. 18, 2019), at 91, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/1791.pdf> (“U.K. House of Commons Report”).

³ As used in the District’s Complaint and this filing, “District” refers to the District of Columbia as a party in this litigation, and the District of Columbia’s laws. “D.C.” refers to Washington, D.C. as a location.

which includes data they directly supply (e.g., name, email address, birthday, gender) and data pertaining to their activity using the service (e.g., “Likes,” “friends,” login times, Facebook messages). *Id.* ¶¶ 12-15. This consumer data is the engine that drives Facebook’s business model, which generates revenue by “sell[ing] targeted advertising to marketers” who run “targeted ads to particular individuals and demographics.” *Id.* ¶ 17. While consumers use Facebook’s social networking services “free of direct monetary charge,” in exchange for those services, consumers provide their data, which the company “monetizes through the sale of targeted advertising.” *Id.* For example, Facebook uses the data to allow advertisers to target consumers that reside in a particular jurisdiction, including D.C. *See id.* ¶¶ 13, 17, *see also* Ex. 1, Aff. of Timothy Shirey ¶ 5.

The Complaint alleges Facebook made “ambiguous, misleading, and deceptive” representations to its D.C. consumers in multiple ways, including through various policy documents. *Id.* ¶ 44. These policy documents included a Statement of Rights and Responsibilities (“SRR”) and a Data Use Policy,⁴ which consumers were required to agree to in order to create a Facebook account, as well as the Platform Policy, which applied to third-party applications that Facebook allowed onto its platform. *Id.* ¶¶ 36, 44. The District alleges that Facebook “failed to take reasonable measures to enforce its Platform Policy.” *Id.* ¶ 43. The Complaint provides the example of the “thisisyoudigitallife” application (the “App”), which was launched on Facebook in November 2013. *Id.* ¶ 23. The Complaint alleges that the App improperly harvested the personal data of over 340,000 D.C. residents without their affirmative consent. *Id.* ¶ 30. This data was then sold in violation of Facebook’s Platform Policy to Cambridge Analytica, a political consulting firm that used the data to target digital political advertising during the 2016 U.S. Presidential Election. *Id.* ¶ 31-35. Despite

⁴ In the Complaint, these documents are referred to as a “Terms of Service” and “Data Policy.” Compl. ¶ 44. As Facebook’s Motion refers to these same documents as an “SRR” and “Data Use Policy,” respectively, the District adopts that terminology for ease of reference.

knowing of this violation as early as December 2015, Facebook did not tell affected D.C. consumers that their data was improperly sold to Cambridge Analytica until April 2018. *Id.* ¶¶ 35, 41.

The Complaint further alleges Facebook violated the CCPA in the following specific ways:

1. Facebook’s representations in the SRR that it “required applications to respect a Facebook consumer’s privacy” were “misleading and deceptive” in light of its lack of oversight and enforcement relating to third parties, demonstrated by its failure to “conduct meaningful oversight or enforcement” of the App consistent with its Platform Policy. *Id.* ¶¶ 45-46, 72.
2. Facebook “failed to adequately disclose” the extent to which third-party applications (such as the App) that a consumer had never downloaded could collect their data through their Facebook friends “without their knowledge or affirmative consent.” *Id.* ¶¶ 48, 56, 73.
3. Facebook omitted a material fact when it failed to disclose to affected consumers that their data was improperly accessed by third parties in violation of Facebook’s policies, such as in the example involving the App. *Id.* ¶¶ 57, 74.
4. Facebook’s “confus[ing]” privacy settings, which bifurcated general privacy controls and application data sharing controls, constituted “ambiguities as to material facts that have the tendency to mislead consumers.” *Id.* ¶¶ 49-51, 75.
5. Facebook omitted a material fact when it failed to disclose to consumers that it permitted certain companies to “override a Facebook consumer’s privacy settings and access their information without their knowledge or consent.” *Id.* ¶ 76.

LEGAL STANDARD

When a defendant challenges personal jurisdiction, the plaintiff need make “only a prima facie showing of jurisdiction.” *Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 35 A.3d 1127, 1135 n.9 (D.C. 2012) (citation omitted). The court has “considerable latitude in devising the procedures it will follow to ferret out the facts pertinent to jurisdiction,” and may rely on “written or oral evidence,” such as “affidavits.” *Id.* at 1135. The plaintiff may also rest its arguments on the specific acts alleged in its pleadings, which must be construed in the light most favorable to the plaintiff. *Thomas v. Disabled Am. Veterans Ass ’n*, 930 A.2d 997, 1002 (D.C. 2007).

To survive a motion to dismiss for failure to state a claim, a complaint need only satisfy SCR-Civil 8(a), which requires a “short and plain statement” of the claim for relief that is “plausible on its face” and “allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged.” *Potomac Dev. Corp. v. D.C.*, 28 A.3d 531, 543-44 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The Court must construe the complaint in the light most favorable to the plaintiff and accept the facts alleged in the complaint as true. *Id.*

ARGUMENT

I. Facebook is subject to personal jurisdiction in this Court.

As this is a government enforcement case, any analysis of personal jurisdiction must begin with the fact that the District has a “manifest interest” in providing a forum for adjudicating violations of its own law. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985); *see also Bulldog Inv’rs Gen. P’ship v. Sec’y of Commerce*, 457 Mass. 210, 218 (Mass. 2010) (same in securities law context); *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481, 511 (Md. Ct. Spec. App. 2006) (same in consumer claims context). This interest is particularly strong here, as the District is seeking to enforce the CCPA, which “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be [] received in [D.C.]” D.C. Code § 28-3901(c). Against this backdrop, this Court’s exercise of specific personal jurisdiction over Facebook involves a two-step inquiry of whether jurisdiction is proper under: (1) the Constitution’s Due Process Clause, and (2) the District’s long-arm statute, D.C. Code § 13-423. *Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981). Both prongs are easily satisfied here.

A. Facebook has sufficient minimum contacts with D.C. to satisfy due process.

The due process analysis looks to whether a nonresident defendant has sufficient “minimum contacts” with a state such that it “should reasonably anticipate being haled into court there.” *Burger King*, 471 U.S. at 474. The D.C. Court of Appeals undertakes the “minimum contacts” analysis by determining whether (1) the nonresident “purposefully directed” its activities at D.C. residents; (2) the litigation results from alleged injuries that “arise out of or relate to” those activities; and (3) the

assertion of personal jurisdiction comports with “fair play and substantial justice.” *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 330-31, 34 (D.C. 2000). Each of these requirements is met here.

1. Facebook purposefully directed activities at D.C. by offering its social networking services to D.C. consumers.

Through directing its social networking service to D.C., Facebook made representations to D.C. consumers about their data security, obtained their data, and monetized that data through targeted advertising. That Facebook has purposefully directed its activities to D.C. is confirmed by (1) Facebook’s own regulatory filings, (2) case law from similar state government enforcement cases, and (3) federal precedent examining online businesses like Facebook that operate on a national scale.

First, Facebook has admitted it purposefully directs its social networking services to D.C. consumers in multiple filings with the Department of Consumer and Regulatory Affairs (“DCRA”). In an Application for Certificate of Authority for Foreign Business & Professional Corporation filed with DCRA in 2009, Facebook’s General Counsel made the following statement:

Briefly describe the specific proposed activity the corporation will transact in the District of Columbia . . .

[Facebook’s sworn response]: ONLINE SOCIAL NETWORKING

Ex. 2 at 1 (collected Facebook DCRA filings (emphasis added)). Facebook made similar sworn admissions to DCRA in 2011, 2014, 2016 and 2018. *Id.* at 2-5. Facebook cannot credibly argue it could not anticipate being haled into D.C. on claims related to its social networking service where it regularly admits it provides those services here. *Stricker v. Shor*, 2018 WL 1745783, at *4 (N.D. Cal. Apr. 11, 2018) (foreign corporation filing that included a representation defendant “transact[s] interstate business” in California “suggest[s] that specific jurisdiction in California is reasonable”).

Second, state courts in other government enforcement actions have found purposeful direction satisfied by significantly fewer contacts than Facebook’s vast D.C. consumer base.⁵ For instance, in

⁵ Because this is a government enforcement action, the forum selection clause in Facebook’s user agreements,

Bulldog Investors, the Massachusetts Supreme Court found specific jurisdiction over an out-of-state company based just on the accessibility of its website and a single email sent to a Massachusetts resident. 457 Mass. at 214, 219; *see also State v. N. Atl. Refining Ltd.*, 999 A.2d 396, 409 (N.H. 2010) (fact that consumer law enforcement action was brought by state was factor “establish[ing] the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required”). Facebook’s contacts with D.C. are much more extensive – including providing social networking services and corollary targeted advertising to nearly half of all D.C. residents. Compl. ¶¶ 10, 17. And unlike the single email in *Bulldog Investors*, the District alleges that Facebook sent messages relating to Cambridge Analytica to each of its 340,000-plus affected D.C. consumers. *See* Compl. ¶ 41 (alleging that in April 2018, Facebook “finally disclosed to its consumers” that their data was improperly harvested by Cambridge Analytica).⁶

Third, a line of federal cases holds that a company purposefully directs its activities at a forum state where, as here, it cultivates and exploits its business in that state for commercial gain. The Supreme Court has held that where a defendant “is carrying on part of its general business in [the forum state], [] that is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in [the forum state].” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 (1984). In *Hustler*, a New York plaintiff sued Hustler, an Ohio magazine, for libel in New Hampshire, the only jurisdiction in which her claim was not time-barred. *Id.* at 772. Hustler was

Mot. at 8, is not relevant to the jurisdictional analysis. The District is not a party to these agreements, so it cannot be bound by the agreement’s forum selection clause. *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 298 (2002) (EEOC not bound by employee’s arbitration agreement with employer).

⁶ This disclosure was sent to Facebook consumers affected by the Cambridge Analytica incident, including D.C. consumers, and took the form of a message that appeared when a consumer logged in to Facebook. The message informed the consumer that the App “may have misused some of your Facebook information by sharing it with a company called Cambridge Analytica” and provided a link to “see how you’re affected.” *See Facebook now lets you know if your data was shared with Cambridge Analytica*, CNBC (Apr. 9, 2018), <https://www.cnbc.com/2018/04/09/facebook-to-notify-users-if-data-was-shared-with-cambridge-analytica.html>

a nationally distributed magazine, with its New Hampshire readership amounting to less than one percent of its total circulation. *Keeton v. Hustler Magazine, Inc.*, 682 F.2d 33 (1st Cir. 1982). The Supreme Court found this presence sufficient to establish purposeful direction toward New Hampshire – because the magazine “produce[d] a national publication aimed at a nationwide audience,” “[t]here is no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed.” *Hustler*, 465 U.S. at 781.

Courts have applied *Hustler* in the internet context to similarly find purposeful direction where an online business’s national operations exploit a forum state for commercial gain, even in the absence of specific activities directed toward that state. *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218 (9th Cir. 2011). In *Mavrix Photo*, a Florida plaintiff brought a copyright action in California against an Ohio defendant who published an infringing photo on its celebrity gossip website that was nationally accessible, but otherwise not marketed in California. *Id.* at 1221-22, 30. The Ninth Circuit found the website was purposefully directed toward California by analogizing to *Hustler* – because both defendants “sought and attracted [a] nationwide audience[]” and “cultivated [their] nationwide audiences for commercial gain,” the effect of their activities in the forum state was a “predictable consequence of their business models” that could not be characterized as “random, fortuitous, or attenuated.” *Id.*⁷ Similarly, in *uBID, Inc. v. GoDaddy Group, Inc.* – despite “no evidence” that a nonresident internet domain registration company “specifically targets Illinois customers” – the Seventh Circuit relied on *Hustler* to nevertheless hold that the company’s “hundreds of thousands”

⁷ Facebook itself has relied upon *Mavrix Photo* in asserting specific jurisdiction in lawsuits where it was the plaintiff. In *Facebook, Inc. v. Banana Ads LLC*, Facebook sued nonresident defendants who registered websites based off misspellings of “facebook.com”; the court found that these (otherwise nationally accessible) websites were purposefully directed at California because the nonresident defendants “made money by confusing Facebook users, including users in California, and capitalizing on this confusion.” 2013 WL 1873289, at *3 (N.D. Cal. Apr. 30, 2013) (Magis. Ct.), *report adopted in full*, 2013 WL 12308477 (N.D. Cal. June 24, 2013).

of Illinois customers demonstrated it “purposefully availed itself of the Illinois market” through “its deliberate and continuous exploitation of that market.” 623 F.3d 421, 428-29 (7th Cir. 2010).

Under this precedent, Facebook purposefully directed activities at D.C. by transacting with D.C. consumers for commercial gain. It does not matter that Facebook “operates in the same manner in all jurisdictions.” Mot. at 8. As in *Hustler*, *Mavrix Photo*, and *GoDaddy*, it is more than sufficient that Facebook made misleading representations to hundreds of thousands of consumers in D.C., signed them up for its social networking services, and then exploited their data for commercial gain through the sale of targeted advertisements. E.g., Compl. ¶¶ 1, 14, 17, 72-76; see also *Mavrix Photo*, 647 F.3d at 1230 (website’s sale of third-party advertisements “directed to Californians” indicated defendant knew “either actually or constructively” that it “exploits [its California user] base for commercial gain”). A conservative estimate based off Facebook’s financial disclosures indicates it made more than \$10 million from selling advertising targeted at D.C. consumers in the fourth quarter of 2018 alone. Ex. 1, Shirey Aff. ¶¶ 3-4.

Facebook’s argument to the contrary relies on cases holding that the “mere accessibility” of a website is insufficient to establish jurisdiction. Mot. at 7. This precedent is inapposite. Facebook does not just operate a merely accessible website. Rather, Facebook offers (and monetizes) a sophisticated social networking service that is used by nearly half of all D.C. residents.⁸ Compl. ¶¶ 17, 30. With this level of operational scale and affected forum consumers, this case falls squarely within the ambit of *Hustler*, *Mavrix Photo*, and *GoDaddy*. It is not at all like the cases Facebook cites. Facebook is

⁸ Notably, the Superior Court has considered a website’s “interactiv[ity]” to evaluate specific jurisdiction. *Peluzzo v. Leiboff*, 2004 WL 2926252, at *4 (D.C. Super. Ct. Dec. 13, 2004) (citing *Zippo Mfg. Co. v. Zippo Dot Com*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). That Facebook’s social networking services prioritize user interactivity is an understatement. Compl. ¶ 16. Indeed, Facebook maintains the same user “contracts with residents” in D.C. that involve the “knowing and repeated transmission” of data over the internet sufficient to confer jurisdiction in *Zippo*. 952 F. Supp. at 1124. And even the D.C. federal courts’ limitation of *Zippo* to websites that “allow its operator to engage in real-time transactions with District of Columbia residents,” *Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d 15, 28 (D.D.C. 2017), would not foreclose *Zippo*’s applicability due to the sheer volume of data transacted between Facebook and D.C. residents.

not, for instance, like a Cayman Islands defendant that operated a Chinese video streaming website who had no “case-relevant connections to the United States” beyond its website’s “mere accessibility” in D.C. *Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d 15 (D.D.C. 2017). Nor is Facebook like a West Virginia radio broadcaster operating a website which a Maryland plaintiff could not even allege was ever visited by a D.C. resident. *Hayes v. FM Broad. Station WETT*, 930 F. Supp. 2d 145, 152 (D.D.C. 2013); *see also GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, (D.C. Cir. 2000) (dealing with “Yellow Pages” website that was similarly “mere[ly] accessib[le]”). Facebook’s argument conflates its sprawling internet service (that thousands of D.C. residents use every day) with websites accessed by happenstance. It should be rejected.

2. This action arises out of Facebook’s representations to D.C. consumers in the course of providing social networking services.

The “minimum contacts” analysis also requires that the cause of action “arise out of or relate to” the activities directed at the forum. *Shoppers*, 74 A.2d at 328. The D.C. Court of Appeals has interpreted this nexus requirement flexibly to require only a “discernible relationship” between the cause of action and the forum activities. *Id.* at 335. In *Shoppers*, the Court of Appeals found the nexus requirement satisfied in a personal injury action suffered in a Maryland grocery chain that merely advertised in D.C. newspapers because the injury was “substantially connected” with the advertising activity.⁹ *Id.* The nexus here is far tighter, as the District’s claims arise directly out of Facebook’s forum activities – its representations and services provided to D.C. consumers. *E.g., Ill. v. Hemi Grp., LLC*, 622 F.3d 754, 759 (7th Cir. 2010) (state consumer protection action sufficiently related to

⁹ In *Triple Up*, the D.C. federal district court questioned *Shoppers*’s adoption of the “discernible relationship” test. 235 F. Supp. 3d at 27. The D.C. Court of Appeals has not yet addressed *Triple Up*, and this Court is bound by D.C. Court of Appeals precedent. In any event, even the more stringent nexus tests would be satisfied in this action. The “but-for” test is satisfied because “but for” Facebook’s representations and services provided to D.C. consumers, this claim “would not have arisen”; the proximate cause test is satisfied because Facebook’s representations and services provided to D.C. consumers are the “substantive” basis for the District’s claim. *See Shoppers* 746 A.2d at 333-34.

nonresident defendant’s online sale of cigarettes to Illinois consumers prohibited by Illinois law); *Ferron v. 411 Web Directory*, 2009 WL 2047780, at *5 (D. Ohio 2009) (consumer protection claim sufficiently related to nonresident’s deceptive emails received in Ohio).¹⁰

3. Exercising jurisdiction over Facebook is fair.

Facebook, a global corporation that made revenues of over \$40 billion in 2017 and operates a D.C. office with over 150 employees,¹¹ simply cannot argue that exercising jurisdiction here would be unfair. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) (“[M]odern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.”).¹²

More broadly, the Court should also reject Facebook’s suggestion that the jurisdictional analysis is somehow narrowed for companies that transact business online. *See Mot.* at 7-8. “‘Cyberspace’ . . . is not some mystical incantation capable of warding off the jurisdiction of courts built from bricks and mortar” and traditional notions of jurisdiction are “adaptable to the transformations wrought by the Internet.” *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 510-11 (D.C. Cir. 2002). And contrary to Facebook’s position, whether a service is tangible or digital, “hundreds of thousands” of consumers in a forum state generally presents a “straightforward case for

¹⁰ The satisfaction of this nexus requirement also distinguishes this action from Facebook’s citations to its jurisdictional victories against individual plaintiffs. Those plaintiffs (two of which proceeded pro se) advanced claims that were separate from Facebook’s contacts with the forum. *See Georgalis v. Facebook, Inc.*, 324 F. Supp. 3d 955, 961 (N.D. Ohio 2018) (pro se plaintiff’s First Amendment claim resulting from censored Facebook content was not related to jurisdictional allegation that Facebook advertised to Ohio residents); *Ralls v. Facebook*, 221 F. Supp. 3d 1237, 1244 (W.D. Wash. 2016) (pro se plaintiff, in civil rights claim resulting from censored Facebook content, failed to allege that action was related to Facebook’s forum activities); *Gullen v. Facebook.com, Inc.*, 2016 WL 245910, at *2 (N.D. Ill. Jan. 21, 2016) (in privacy claim, plaintiff failed to allege credible facts that cause of action arose out of Facebook’s forum contacts).

¹¹ Facebook Wash., D.C., *Engineering growth at Facebook* (June 13, 2018), <https://www.facebook.com/notes/facebook-washington-dc/engineering-growth-at-facebook-dc/10156592910844455/>

¹² Because Facebook did not argue in its Motion to the contrary, it has waived any argument on this issue. *Jonathan Woodner Co. v. Adams*, 534 A.2d 292, 295 n.7 (D.C. 1987) (argument raised for first time in reply brief deemed waived).

sufficient minimum contacts” that should not be “complicate[d]” by “unusual [online] business model[s].” *GoDaddy*, 623 F.3d at 429; *see also Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1783-84 (2017) (while nonresident plaintiffs could not sue nonresident defendant in California state court in products liability action, they “could probably sue together in their home States”). Simply put, there is nothing unfair about Facebook being called to defend itself in D.C. for representations it made to its extensive D.C. consumer base in a jurisdiction where, by its own repeated admissions, it regularly transacts business.¹³

B. The District’s long-arm statute authorizes specific jurisdiction over Facebook.

Several provisions of the long-arm statute apply here. First, Section 13-423(a)(1) of the long-arm statute authorizes jurisdiction over companies that “transact[] any business” in D.C. – and because this prong is “coextensive” with the reach of the Due Process Clause, it is entirely “subsumed” into the preceding constitutional inquiry.¹⁴ *Fisher v. Bander*, 519 A.2d 162, 163 (D.C. 1986). But even were this Court to separately address this prong, Facebook has admitted it provides its social networking services in D.C. and it counts numerous D.C. consumers among its users. Facebook’s argument that it does not do business in D.C. because its social networking services are provided “for free to all users worldwide,” Mot. at 10, is factually and legally wrong. The argument first ignores the District’s allegations that Facebook’s social networking services are part-and-parcel of a business model that monetizes consumer data “through the sale of targeted advertising.” Compl. ¶¶ 12, 17. And neither the CCPA nor jurisdictional caselaw requires a monetary exchange to

¹³ The Superior Court has also found specific jurisdiction over nonresident defendants who transacted business with D.C. consumers over the internet. *D.C. v. CashCall, Inc.*, Case No. 2015 CA 006904 B, at 7-8 (D.C. Super. Ct. July 11, 2016) (CCPA action against nonresident individual defendant who controlled California loan servicing company that did business in D.C. via the internet) (attached as Ex. 3); *see also Rilley v. MoneyMutual LLC*, 884 N.W.2d 321 (Minn. 2016) (consumer protection action against nonresident defendant that sent emails to forum state residents); *MaryCLE, LLC*, 166 Md. App. at 509 (same).

¹⁴ D.C. Code § 13-423 also includes a subsection (b), which requires that a claim “aris[e] from acts enumerated in [Section 423(a)(1)]”; this requirement has been interpreted to be coextensive with the constitutional nexus requirement, which is discussed in Section I(A)(2), *infra*. *See Shoppers*, 746 A.2d at 332-33.

find that a defendant “transact[s] any business” here. *See, e.g.*, D.C. Code § 28-3901(c) (requiring only that a consumer service be “received” in D.C.); *Daley v. AKA Sorority, Inc.*, 26 A.3d 723, 728 (D.C. 2011) (board meeting held in D.C. sufficed to meet transacting business prong). Indeed, in one particularly analogous case, the court in *Gather, Inc. v. Gatheroo, LLC*, found that a much smaller social networking website that offered services “free of charge” and had “several Massachusetts users who had accepted [the website’s] terms and conditions” was “conducting business in Massachusetts” and subject to specific jurisdiction. 443 F. Supp. 2d 108, 111, 118 (D. Mass. 2006).

Second, Facebook is also subject to D.C. Code § 13-423(a)(3), which authorizes personal jurisdiction over a defendant who “caus[es] tortious injury in the District of Columbia by an act or omission in the District of Columbia.” Because CCPA violations are akin to torts, they effect tort-like injuries. *See D.C. v. Hofgard*, 2015 WL 9311793, at *6 (D.C. Super. Ct. Aug. 5, 2015).¹⁵ The alleged injuries were also plainly suffered in D.C. – the residence of Facebook’s D.C. consumers. *E.g.*, Compl. ¶ 2. Facebook’s CCPA violations also occurred in D.C. because it is there that D.C. consumers accessed Facebook’s services. *See Chiste v. Hotels.com L.P.*, 756 F.Supp.2d 382, 400 (S.D.N.Y. 2010) (harm to consumer occurred in state where he “accessed the website”). Facebook documents obtained through the District’s pre-suit investigation also confirm that Facebook employees based in D.C. were involved in the response to and oversight of the Cambridge Analytica incident, further establishing that Facebook’s relevant acts and omissions took place in D.C. *See Ex. 4, Decl. of Marta Pavano ¶¶ 4, Att. A (FB-CA-DCAG-00050485)*.

Third, even were this Court to conclude Facebook’s acts and omissions occurred outside D.C., Section 13-423(a)(4) authorizes jurisdiction over a defendant who causes tortious injury in D.C. by

¹⁵ *See also Vlach v. Yaple*, 670 F. Supp. 2d 644, 648 (D. Ohio 2009) (consumer protection violation caused “tortious injury” under Ohio long-arm statute); *Green v. NBS, Inc.*, 409 Md. 528, 542 (Md. 2009) (statutory damages cap for victims of “tortious conduct” applied to consumer protection claim because the term “tort” encompassed “all civil wrongs”) (internal quotations omitted).

acts or omissions “outside” D.C. when it “regularly does or solicits business . . . or derives substantial revenue from [] services rendered” in D.C. As discussed above, Facebook’s corporate filings, D.C. consumer base, and estimated \$10 million in D.C. advertising revenue in a single fiscal quarter demonstrate its regular business in D.C. *See infra* at 9. Facebook’s only response is to marginalize its D.C. consumers, arguing that they cannot possibly be a source of “substantial revenue” because they constitute “a mere .01 percent” of its global user base. Mot. at 11-12. But as Facebook recognizes, “substantial revenue” involves looking to both “the absolute amount” and the “percentage of total sales.” *Id.* (quoting *Founding Church of Sci. of Wash., D.C. v. Verlag*, 536 F.2d 429, 433 (D.C. Cir. 1976)). And with an absolute amount well into the millions, even a small percentage of total sales suffices to establish substantial revenue here. Facebook’s own cited precedent says as much. *Verlag*, 536 F.2d at 433 (“approximately one percent” of total revenues in D.C. (\$26,000 in a ten-month period) was “substantial revenue”) (relying on *Ajax Realty Corp. v. JF Zook, Inc.*, 493 F.2d 818, 821-22 (4th Cir. 1972) (.05 percent of total sales in Virginia (\$37,000) was “substantial revenue”). Accordingly, multiple prongs of the long-arm statute authorize jurisdiction over Facebook here.¹⁶

II. The District has stated a claim under the CCPA.

A. Facebook’s disclosures to consumers are inconsistent, inaccurate, and ambiguous.

Whether a statement has a tendency to mislead and whether misrepresented/omitted facts are material are ordinarily questions of fact. *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442, 445

¹⁶ The District’s allegations make a prima facie showing of personal jurisdiction. However, if the Court finds these allegations insufficient, it should allow jurisdictional discovery. *Diamond Chem. Co., Inc. v. Atofina Chems., Inc.*, 268 F. Supp. 2d 1, 15 (D.D.C. 2003) (“[T]his Court finds it hard to imagine a situation where a plaintiff could not demonstrate that it can supplement its jurisdictional allegations through discovery.”). In addition, because the “jurisdictional facts are inextricably intertwined with the underlying claims” (i.e., records relating to third-party applications that improperly accessed D.C. consumer data would bear on both the jurisdictional and CCPA inquiries), the Court could also adopt the “proper course [] to resolve the issue by proceeding on the merits.” *Verizon Online Servs., Inc. v. Ralsky*, 203 F. Supp. 2d 601, 609 n.6 (E.D. Va. 2002).

(D.C. 2013); *Mann v. Bahi*, 251 F. Supp. 3d 112, 126 (D.D.C. 2017).¹⁷ Facebook seeks to resolve these questions as a matter of law by attaching voluminous disclosures whose purported “accura[cy]” obviates a factual inquiry.¹⁸ Mot. at 13. But critically, these disclosures are not accurate. Unlike Facebook’s cited precedent involving unambiguous disclosures, Mot. at 13, Facebook’s attached documents are rife with inconsistencies and conflicting representations – which demonstrate that a reasonable consumer’s understanding of them is a factual question that cannot be resolved now.

Failure to prevent third parties from misusing user data: Facebook attempts to wave away the District’s allegation that it misrepresented the extent to which it “implement[ed] and maintain[ed] reasonable oversight of applications,” Compl. ¶ 47, by pointing to a disclaimer in its SRR that stated, “FACEBOOK IS NOT RESPONSIBLE FOR THE ACTIONS . . . OF THIRD PARTIES.” Mot. at 15 (quoting Ex. 3 at 7 (capitalization in original)). But this disclosure is belied by numerous conflicting representations in the exact same document relating to Facebook’s oversight and enforcement of third-party applications. These multiple conflicting representations include:

- “We [Facebook] require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information.” Mot. Ex. 3 at 1 (emphasis added) (on the SRR’s first page);
- “To ensure your [a developer’s] application is safe for users, we [Facebook] can audit it” and “[w]e [Facebook] can require you [developers] to delete user data if you use it in a

¹⁷ See also *Kirkland v. Fin. Recovery Servs., Inc.*, 2006 WL 8432527, at *2 (S.D. Fla. June 12, 2006) (“[I]n cases involving consumer protection, courts consistently treat the issue of confusion, meaningfulness, and materiality as a question of fact to be determined from the perspective of the ‘reasonable consumer.’”) see also *Williams v. Gerber Prod. Co.*, 552 F.3d 934, 939 (9th Cir. 2008) (claims “rare[ly]” dismissed unless disclosures make it “impossible for the plaintiff to prove that a reasonable consumer was likely to be deceived”).

¹⁸ This argument also fails for two other fundamental reasons. First, the District’s CCPA claims are broader than Facebook’s disclosures. E.g., Compl. ¶ 45 (alleging Facebook’s “public statements that it would protect consumers’ private information” were misleading). Second, Facebook’s argument relies entirely on language in its November 2013 SRR and Data Use Policy. Mot. 13-16. But this language was subsequently removed or changed in later iterations of these documents that became operative during the relevant time period pertaining to the District’s Complaint. Compare Mot. at 14 (quoting language from Ex. 8 at 10 (Data Use Policy effective November 15, 2013)) with Mot. Ex. 9 (Data Use Policy effective Jan. 30, 2015) (quoted language removed altogether or changed) and Compl. ¶ 38 (App’s access to Facebook not terminated until December 2015). Facebook’s failure to address the shifting language of its own disclosures further highlights that their interpretation is not appropriate for resolution as a matter of law.

way that we determine is inconsistent with the users' expectations." Mot. Ex. 3 at 4 (emphasis added); and

- "You [developers] will not sell user data." *Id.* (emphasis added).

A reasonable consumer's understanding of these conflicting representations, which must be read together, cannot be resolved at the pleading stage. *See FTC v. Pharmtech Research, Inc.*, 576 F. Supp. 294, 301 (D.D.C. 1983) (capacity of statement to deceive "judged by the impression conveyed by the entire [statement], and not by the impact of isolated words or phrases"); *Giant Food, Inc. v. FTC*, 322 F.2d 977, 986 (D.C. Cir. 1963) (conflicting statements in advertisement's disclaimer was deceptive and confusing); *see also FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 41 (D.C. Cir. 1985) (even though company's claim that cigarette contained "1 mg. tar" was "literally true," statement was nonetheless "inherently deceptive" because smoker behavior often resulted in higher tar yields compared to similarly rated cigarettes).¹⁹ Indeed, to the extent a legal conclusion can be drawn, it is that these conflicting statements are inherently misleading.

Device manufacturers and control over applications' access to data: The District also alleges that Facebook failed to disclose to consumers that it "permitted certain companies [like device manufacturers] to override a Facebook consumer's privacy settings and access their information without their knowledge or consent." Compl. ¶ 64. Facebook responds that it disclosed this practice in its Data Use Policy, which explained to consumers that Facebook would "give your information to the people and companies that help us provide, understand, and improve the services we offer." Mot. at 15 (quoting Ex. 8 at 16). But this is not a complete disclosure. It does not inform consumers that their privacy settings could be overridden altogether, as the District has alleged. Moreover, even if the disclosure regarding device manufacturers were adequate (which it is not), it would conflict with

¹⁹ Courts have similarly held that, particularly at the motion to dismiss stage, a subsequent disclaimer does not cure a prior misrepresentation as a matter of law. *See, e.g., Gaidon v. Guardian Life Ins. Co. of Am.*, 94 N.Y.2d 330, 345 (N.Y. 1999) (consumers stated claim they could have been misled by misrepresentations relating to life insurance premium end date even though they signed contractual disclaimer).

Facebook's representation to consumers in its SRR that, "[Y]ou can control how [content and information you post on Facebook] is shared through your privacy and application settings." *Id.* (quoting Ex. 3 at 2). Again, the District states a CCPA claim due to these competing disclosures.

Third-party apps accessing friends' data: Next, Facebook argues that it "did in fact disclose that users' data can be accessed 'by third-party applications downloaded by their Facebook friends.'" Mot. at 13 (quoting Compl. ¶ 4). This is a selective quote that ignores the District's actual allegation – that a violation lies due to Facebook's failure to "adequately disclose" how third-party applications could access consumer data through their Facebook friends. Compl. ¶¶ 4, 48, 73 (emphasis added). Indeed, the District's Complaint recognizes that Facebook "made some disclosures about third-party application access to consumer data." *Id.* ¶ 44. But the District's allegation is that a practice as significant as allowing third parties to access a consumer's data through any of their Facebook friends without their knowledge or affirmative consent amounted to an "end-run" to their data that was inadequately disclosed through hyperlinked fine print that consumers are unlikely to read. *Id.* ¶ 48. The adequacy of how this practice was disclosed cannot be resolved as a matter of law. *See, e.g., Minn. v. Fleet Mortg. Corp.*, 158 F. Supp. 2d 962, 965-66 (D. Minn. 2001) (plaintiff stated consumer claim that mortgage company failed to disclose it was "sharing [consumers'] financial and personal data with other companies" despite parent company's disclosure in data privacy policy that it "may share information with unaffiliated companies to offer products or services"); *In re Vizio, Inc. Consumer Privacy Litig.*, 238 F. Supp. 3d 1204, 1229 (C.D. Cal. 2017) (plaintiff stated fraudulent omission claim that manufacturer of "Smart TVs" failed to disclose it was sharing consumer viewing history through software that was referenced only in an "obscure settings menu"); *B&W Tobacco*, 778 F.2d at 43 (fine print disclosure was inadequate considering expert testimony that consumers were "habituated . . . not to read" the disclosure).

B. Pleading a material omission under the CCPA does not require a duty to disclose.

After finally disclosing in April 2018 to each of the 340,000 affected D.C. consumers that their data had been improperly sold to Cambridge Analytica, Compl. ¶¶ 30, 41, Facebook now argues that its silence is not actionable because it had no “[l]egal [d]uty” to disclose this information in the first place, Mot. at 16. This argument fails as a matter of law because in pleading material omissions under the CCPA, a plaintiff is “not require[d] . . . to plead and to prove a duty to disclose information.” *Saucier*, 64 A.3d at 444. All that is required is a showing that the omitted information is “material and has a tendency to mislead.” *Id.* The District specifically pleaded as much. Compl. ¶ 42.

Facebook’s arguments to the contrary are wrong. First, it argues that this claim is “improperly” brought under the CCPA because it is “governed by a separate . . . statute” relating to notification requirements in the event of a data breach. Mot. at 16. But as Facebook goes on to recognize, that statute is not even applicable here “because there was no ‘breach’ of Facebook’s security system.” *Id.* Facebook’s argument thus appears to be that the District’s CCPA claim is foreclosed because it should have been brought under another statute – but that statute is, by Facebook’s own admission, inapplicable to the alleged facts. Nor is the CCPA supplanted by the District’s data breach statute, as the CCPA “is a remedial statute [that] must be construed and applied liberally to promote its purpose.” *Saucier*, 64 A.2d at 442 (citation and quotation omitted).

Second, Facebook argues that its omission was immaterial because the Cambridge Analytica incident was reported on by a foreign newspaper and other “contemporaneous news reports.” Mot. at 17. But whether these publications were sufficient to put consumers on notice is a question of fact. And in any event, the alleged harm here relates to the rapidly developing business of brokering data over the internet. In newer industries such as these, the question of what an average consumer knew relating to dangers noticed by public reporting is a factual one that courts have deferred to juries to answer. *E.g., Cipollone v. Liggett Grp., Inc.*, 893 F.2d 541, 578 (3d Cir. 1990) (ordinary consumer’s

knowledge of health dangers posed by cigarettes prior to 1966 was issue of fact for jury); *Saucier*, 64 A.3d at 442, 445 (materiality of omission “[o]rdinarily” question of fact). In short, the District more than adequately alleges violations of the CCPA against Facebook.

III. This Court should not stay this action.

Facebook’s fallback argument is to request an unwarranted stay of this case. The party seeking a stay bears the burden of showing that a stay is warranted and must “make out a clear case of hardship.” *Landis v. N. Am. Co.*, 57 S. Ct. 163, 255 (1936). Facebook has simply not done that here and on this ground alone, its request should be rejected. Its arguments are similarly unpersuasive.

First, as to the MDL proceeding, state courts routinely decline stay requests where, as here, the state and federal actions involved different parties, different issues, or both. *E.g., Chicone v. Wellmark, Inc.*, 894 N.W.2d 454, 460 (Iowa 2017) (chiropractor plaintiffs in state action were distinct from healthcare provider plaintiffs in MDL action, weighing against stay); *May v. Smithkline Beecham Clinical Labs., Inc.*, 304 Ill. App. 3d 242, 247 (Ill. App. Ct. 1999) (state cause of action alleged in state suit not alleged in MDL suit weighed against stay). The cases cited by Facebook are thus distinguishable, as each involves the exact same plaintiff in both state and federal proceedings asserting similar claims. *See* Mot. at 18. In contrast, the D.C. Attorney General is distinct from the MDL plaintiffs in both party and purpose, as this suit is “fundamentally a law enforcement action designed to protect the public.” *People v. Pac. Land Research Co.*, 20 Cal. 3d 10, 17 (Cal. 1977). Moreover, Facebook has already effectively lost this issue in the MDL Court, which recently remanded consumer claims filed by the Cook County, Illinois State’s Attorney. In so doing, the MDL Court noted that the “inevitabl[e] delay” resulting from folding a lawsuit into multidistrict litigation was a “serious concern if the plaintiff is a government . . . official” because “the multidistrict litigation process would intrude on state or local sovereignty.” *In re Facebook, Inc. Consumer Privacy User Profile Litig.*, 2019 WL 348893, at *2 (N.D. Cal. Jan. 29, 2019).

Second, the FTC’s separate evaluation of whether Facebook may have violated a consent decree is no reason to stay this case. Whether Facebook’s conduct violates the CCPA is a separate inquiry from whether Facebook’s conduct also violates the FTC’s consent decree. As such, there is no basis to even apply the primary jurisdiction doctrine. *See Rikos v. Procter & Gamble Co.*, 782 F. Supp. 2d 522, 530 (S.D. Ohio 2011) (“Courts have . . . declined to apply the [primary jurisdiction] doctrine where the case is based on state law or legal questions that would not be finally resolved by the agency.”); *Lockwood v. Conagra Foods*, 597 F. Supp. 2d 1028, 1035 (N.D. Cal. 2009) (denying stay because finding by federal agency “would not dispose of plaintiffs’ state law claims”). And even if the District’s claims here completely overlapped with the FTC’s investigation of compliance with its consent decree (which they do not), there would still be no basis for a stay given the uncertain state of the FTC’s investigation. *Dean v. Colgate-Palmolive Co.*, 2015 WL 3999313, at *6 (N.D. Cal. Apr. 19, 2016) (denying motion to stay pending parallel FTC investigation into misleading claims of “deep whitening” toothpaste where no “specifics” were provided about investigation’s progress or end date).

Simply put, the Court should allow this enforcement action to proceed without delay. Facebook’s violations of District law are continuing. This Court should allow the D.C. Attorney General’s efforts to protect D.C. consumers from a company that was recently labeled a “digital gangster” in another government inquiry to proceed.²⁰

CONCLUSION

For the foregoing reasons, this Court should deny in full Facebook’s Motion to Dismiss, or, in the Alternative, Stay Proceedings.

²⁰ U.K. House of Commons Report at 91.

Dated: March 1, 2019

Respectfully submitted,

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Attorney General for the District of Columbia

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Attorneys for Plaintiff District of Columbia

CERTIFICATE OF SERVICE

I, Randolph T. Chen, certify that on March 1, 2019 a copy of the foregoing Opposition to Defendant Facebook, Inc.'s Motion to Dismiss was served on all counsel of record via CaseFileXpress.

/s/
RANDOLPH T. CHEN
Assistant Attorney General

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No.: 2018 CA 008715 B

ORDER

Upon consideration of the Motion to Dismiss filed by Defendant Facebook, Inc., Plaintiff the District of Columbia's Opposition, and the entire record in this case, it is hereby:

ORDERED that Defendant Facebook, Inc.'s Motion to Dismiss is **DENIED**.

Date: _____

JUDGE FERN F. SADDLER
Superior Court of the District of Columbia

Copies to: all counsel of record

EXHIBIT 1

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No.: 2018 CA 008715 B
Judge Fern F. Saddler

DECLARATION OF INVESTIGATOR TIMOTHY SHIREY

I, Timothy Shirey, hereby declare and state as follows:

1. I am employed as an Investigator for the Office of the Attorney General (“OAG”). My business address is 441 4th Street, NW, Washington, D.C. 20001. I am over the age of eighteen (18) years old and am competent to testify to the matters contained in this declaration. I am testifying based on my personal knowledge and information, and I have no personal interest in this action. As part of my job responsibilities, I have been assigned to assist the attorneys handling the Office of Attorney General’s litigation in the above-captioned case.

2. Facebook, Inc. (“Facebook”) makes public financial disclosures relating to its quarterly earnings, which are available at <https://investor.fb.com/financials/?section=quarterlyearnings> (hereinafter, “Facebook’s Investor Relations Website”). Facebook’s Investor Relations Website includes links to Facebook press releases, presentations, and regulatory filings relating to its quarterly earnings.

3. Attached as Attachment A is a true and correct copy of a Facebook earnings presentation titled “Facebook Q4 2018 Results” (the “Facebook Q4 2018 Presentation”) which I accessed through the Facebook Investor Relations Website (also available at

https://s21.q4cdn.com/399680738/files/doc_financials/2018/Q4/Q4-2018-Earnings-Presentation.pdf.

4. The Facebook Q4 2018 Presentation discloses that Facebook's "[a]verage [r]evenue per [u]ser" (ARPU) relating to advertising revenue in Q4 2018 was \$34.09. Att. A at 8. Assuming a Facebook user base in Washington, D.C. ("D.C.") of 300,000 users, applying this ARPU would result in an estimated \$10,227,000 in revenue from D.C. Facebook users in Q4 2018.

5. Attached as Attachment B is a true and correct copy of a Facebook webpage, captioned "See what locations have supported Designated Market Areas for ad targeting" (also available at <https://www.facebook.com/business/help/1501907550136620>). This webpage lists Washington, D.C. as a "Designated Market Area." Att. B at 1.

I declare under penalty of perjury that the foregoing is true and correct.

2/28/19
Date



Timothy B. Shirey

ATTACHMENT A

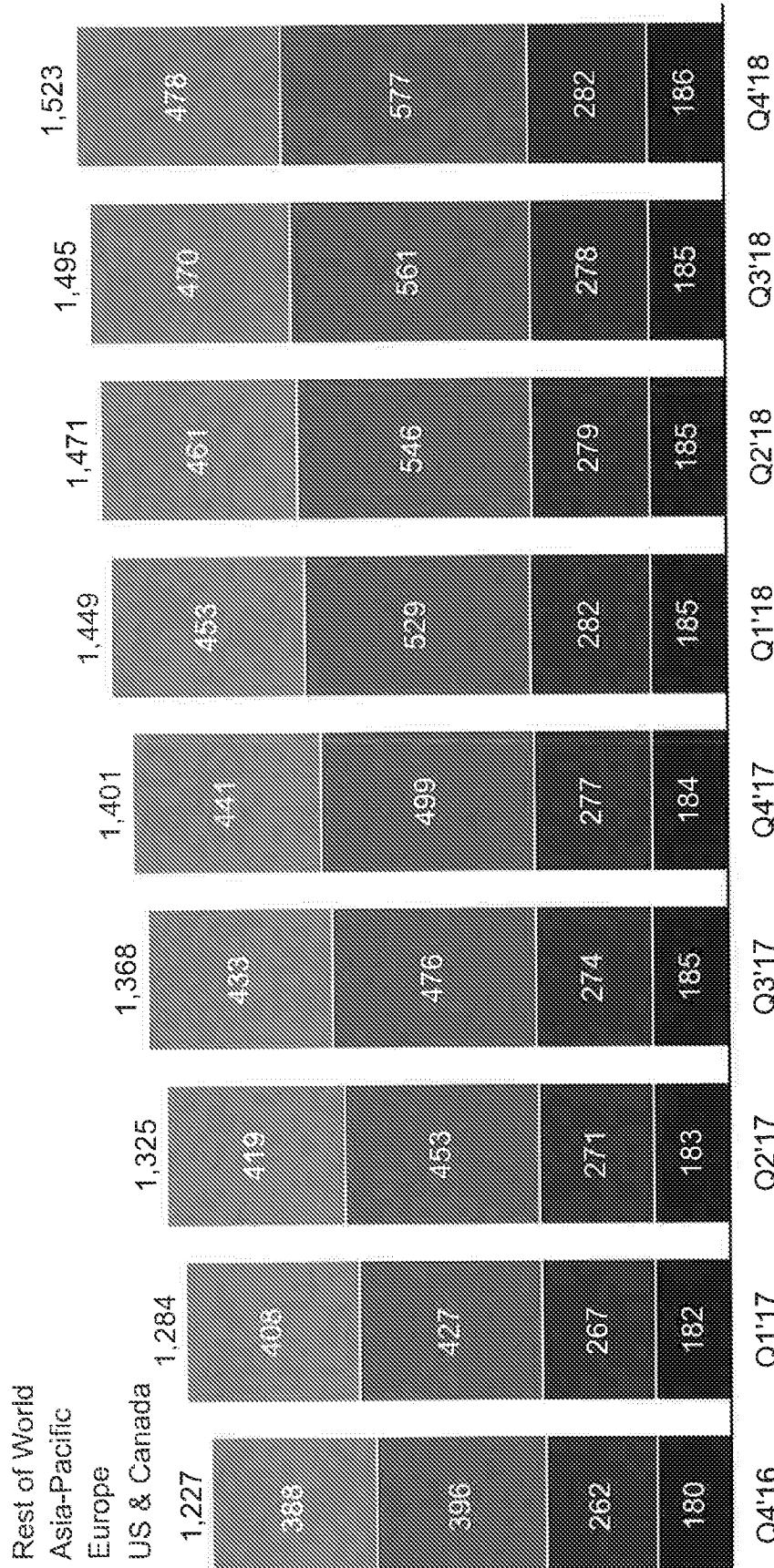
Facebook Q4 2018 Results

facebook

investor.fb.com

Daily Active Users (DAUs)

In Millions



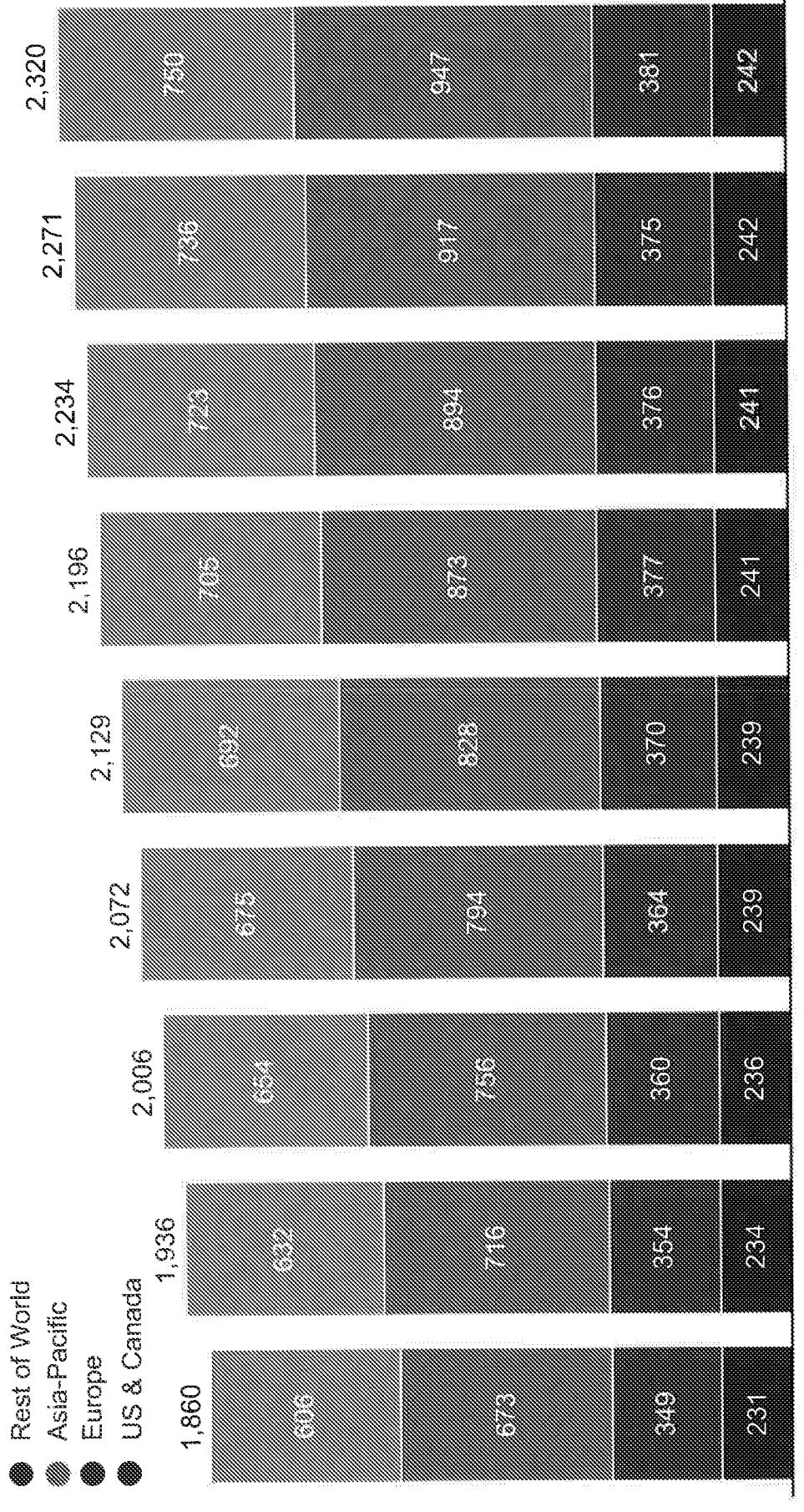
DAUS / MAUS	C413	C413	C413	C413	C413
	66%	66%	66%	66%	66%
	66%	66%	66%	66%	66%
	66%	66%	66%	66%	66%
	66%	66%	66%	66%	66%

Platinum has filed a Form 10-K with the SEC, which contains information regarding the number of our clients and clients that were previously classified as "large" according to the SEC's definition of "large" entities. Our total assets under management as of December 31, 2015, were \$1.510 million. As of December 31, 2015, we had 100 clients.

facebook

Monthly Active Users (MAUs)

In Millions



Please see Facebook's most recent quarterly earnings report for additional information regarding MAU definitions and reconciliation of MAU to daily active users.

Facebook's MAU numbers reflect an overcount of approximately 10% due to double counting of users in countries where multiple devices are used.

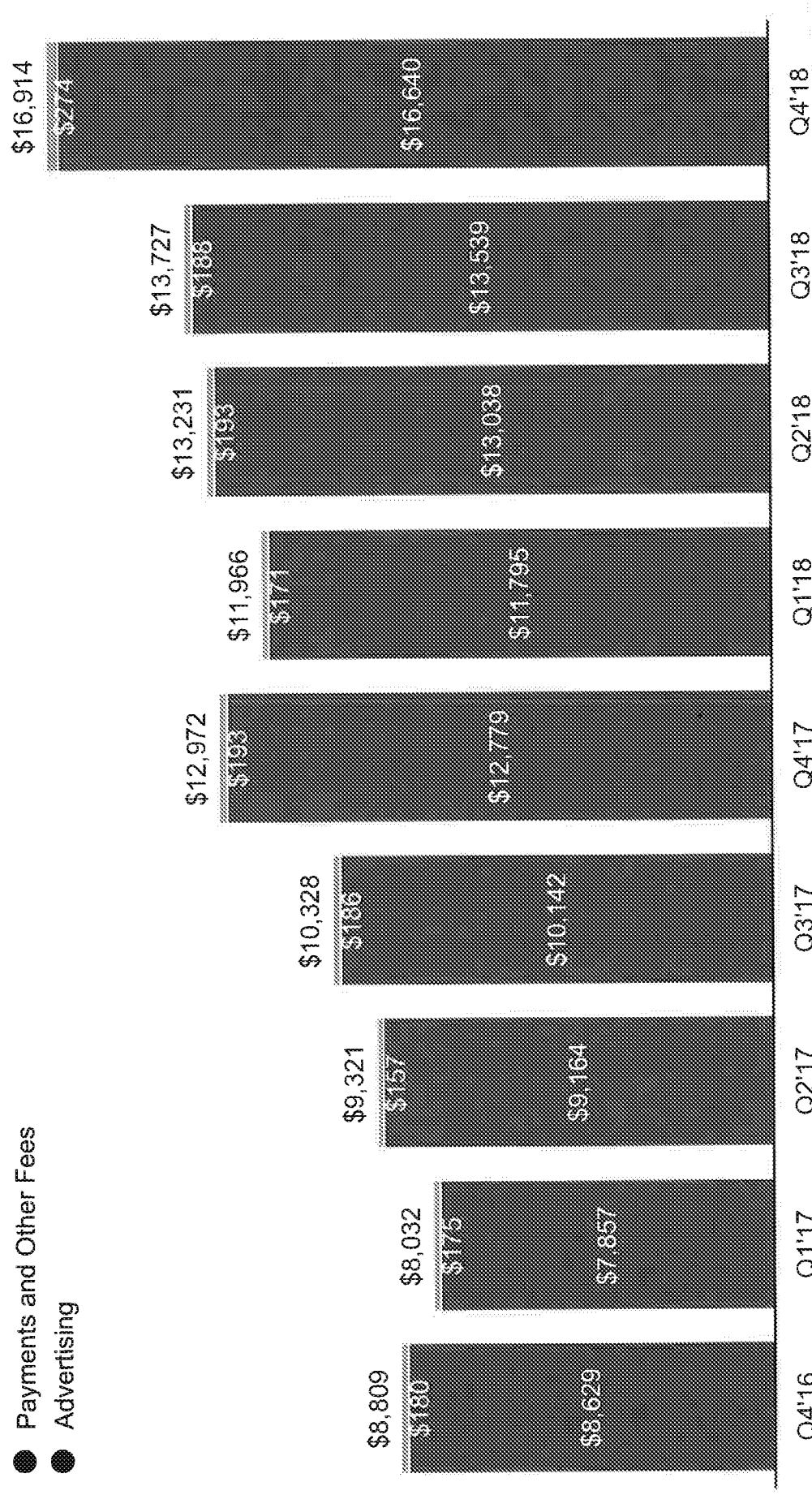
Facebook's MAU numbers reflect an overcount of approximately 10% due to double counting of users in countries where multiple devices are used.

facebook

Revenue

In Millions

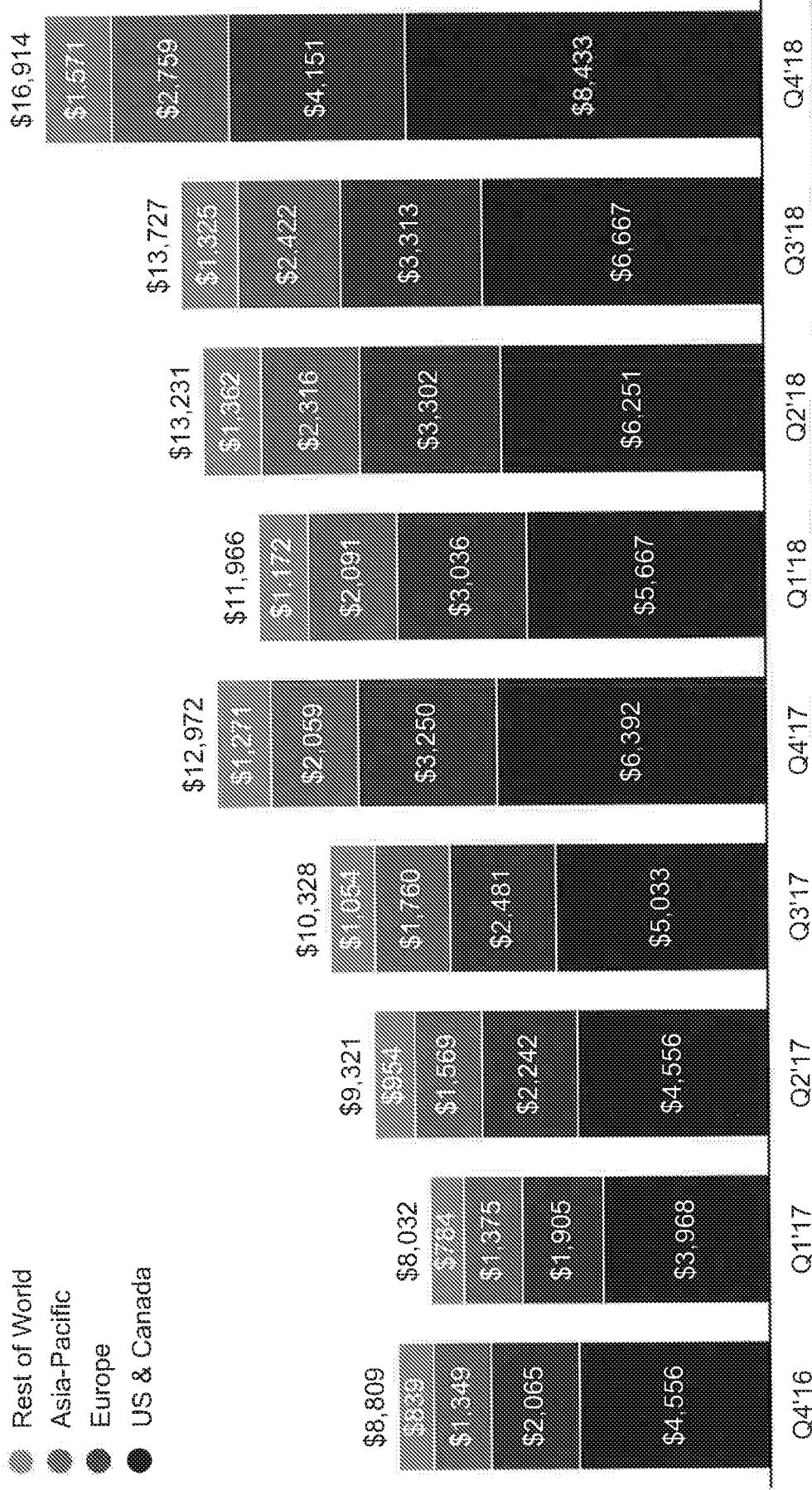
- Payments and Other Fees
- Advertising



facebook

Revenue by User Geography

In Millions

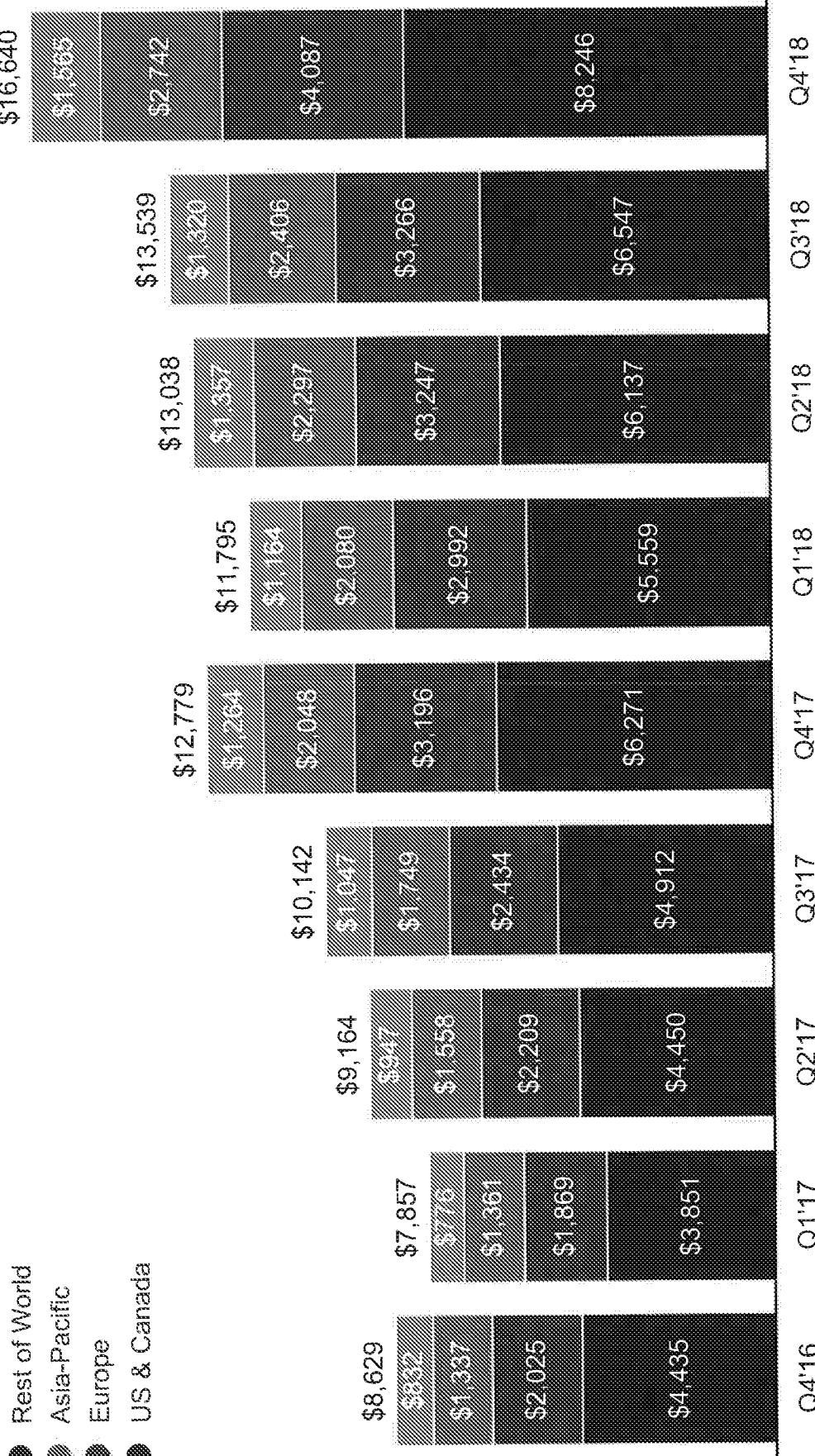


Revenue by user geography is geographically apportioned based on an estimation of the geographic location of our users when they perform a revenue-generating activity. This allocation differs from our revenue disaggregated by geography in our condensed consolidated financial statements where revenue is disaggregated by geography based on the billing address of our customer.

facebook

Advertising Revenue by User Geography

In Millions

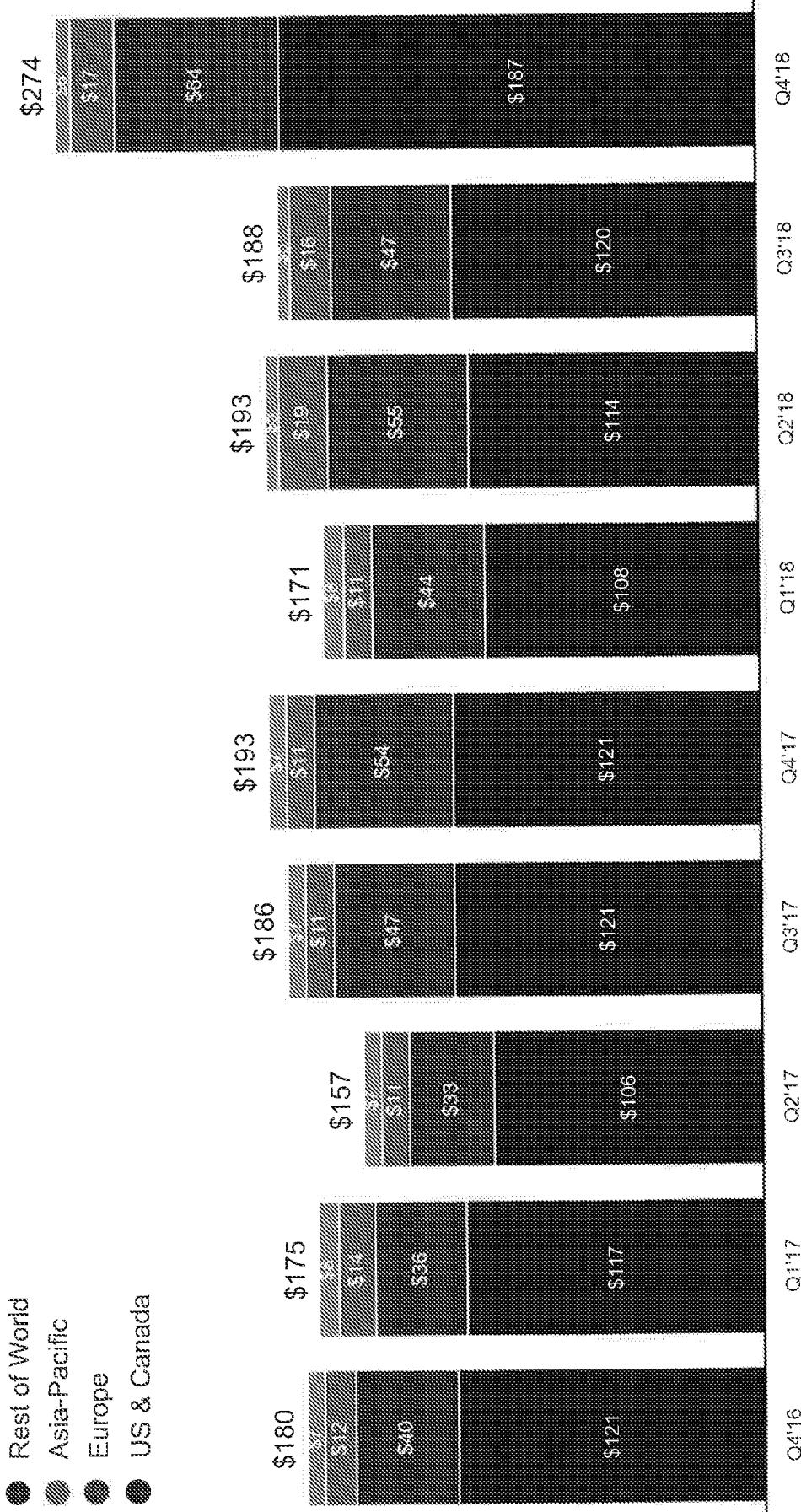


Revenue by user geography is calculated based on our interpretation of the geographic location of our users when they perform a revenue-generating activity. This allocation differs from our revenue disclosure in our consolidated financial statements where revenue is disaggregated by geography based on the billing address of our customer.

facebook

Payments & Other Fees Revenue by User Geography

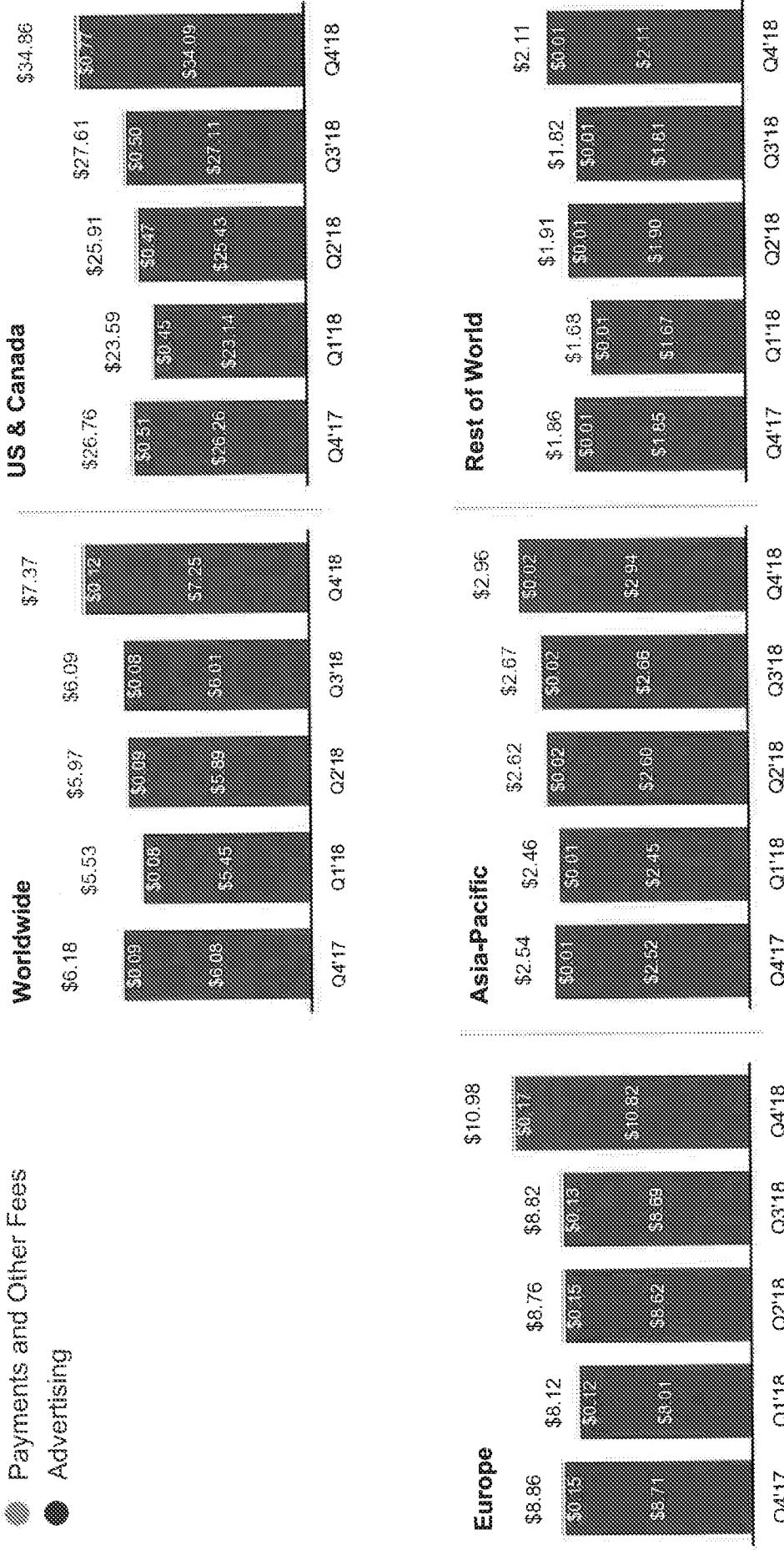
In Millions



Revenue by user geography is geographically segmented based on our estimation of the approximate location of our users when they perform a payment transaction or engage in other fees activity. This information differs from our geographical breakdowns in our quarterly consolidated financial statements where revenue is disaggregated by geographic area based on the billing addresses of our customers.

facebook

Average Revenue per User (ARPU)

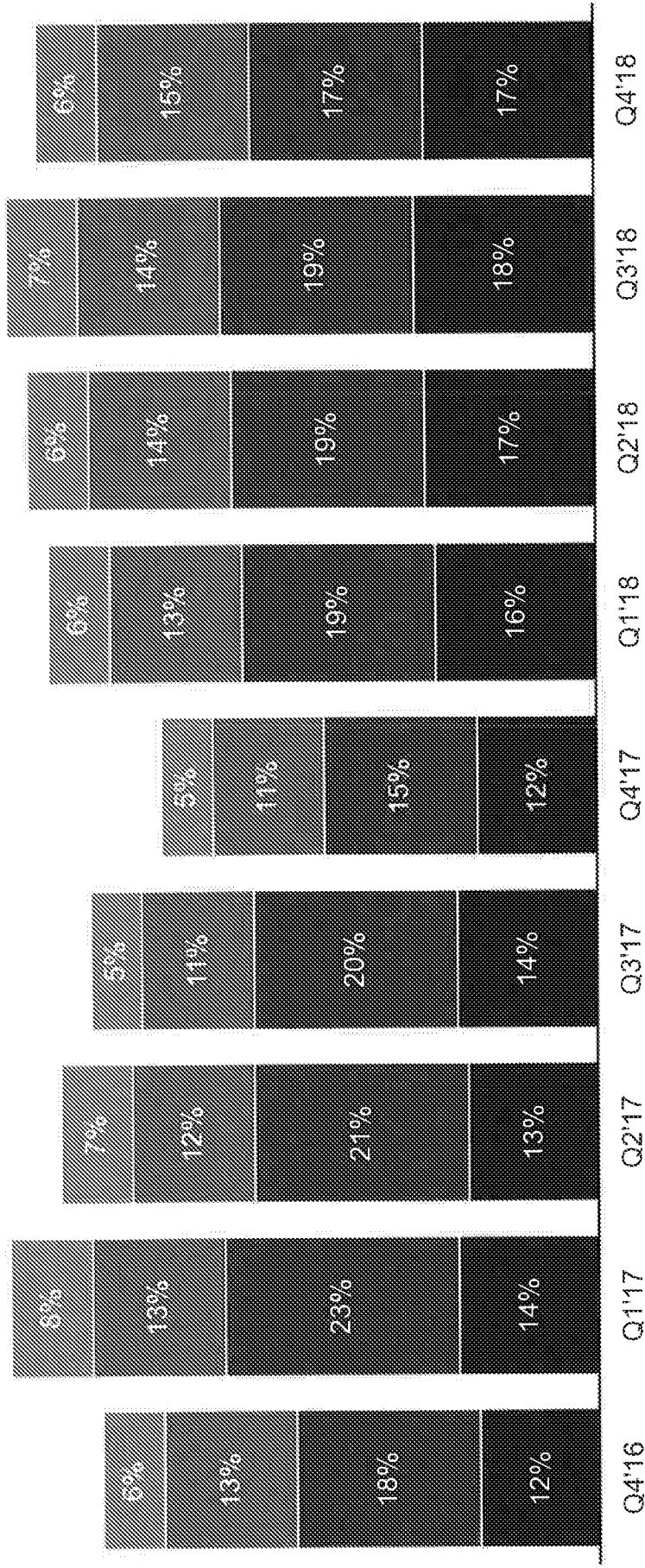


Revenues by user segment are generated from payment and advertising revenue generated by each user. This information is not included in our condensed consolidated financial statements where revenue is disaggregated by geographical area. Please see Facebook's 2018 Annual Report for additional information.

facebook

Expenses as a % of Revenue

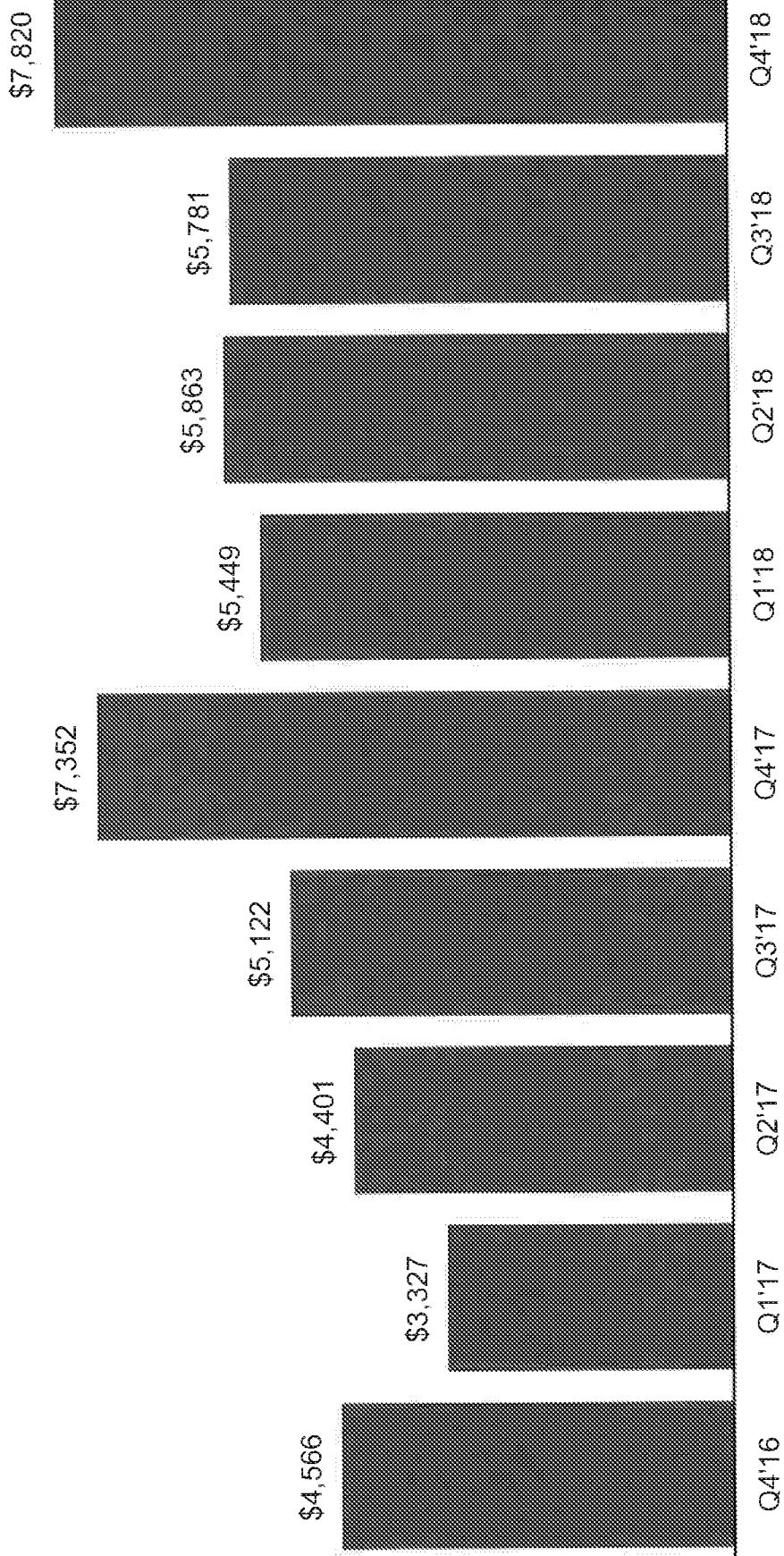
- General & Administrative
- Marketing & Sales
- Research & Development
- Cost of Revenue



facebook

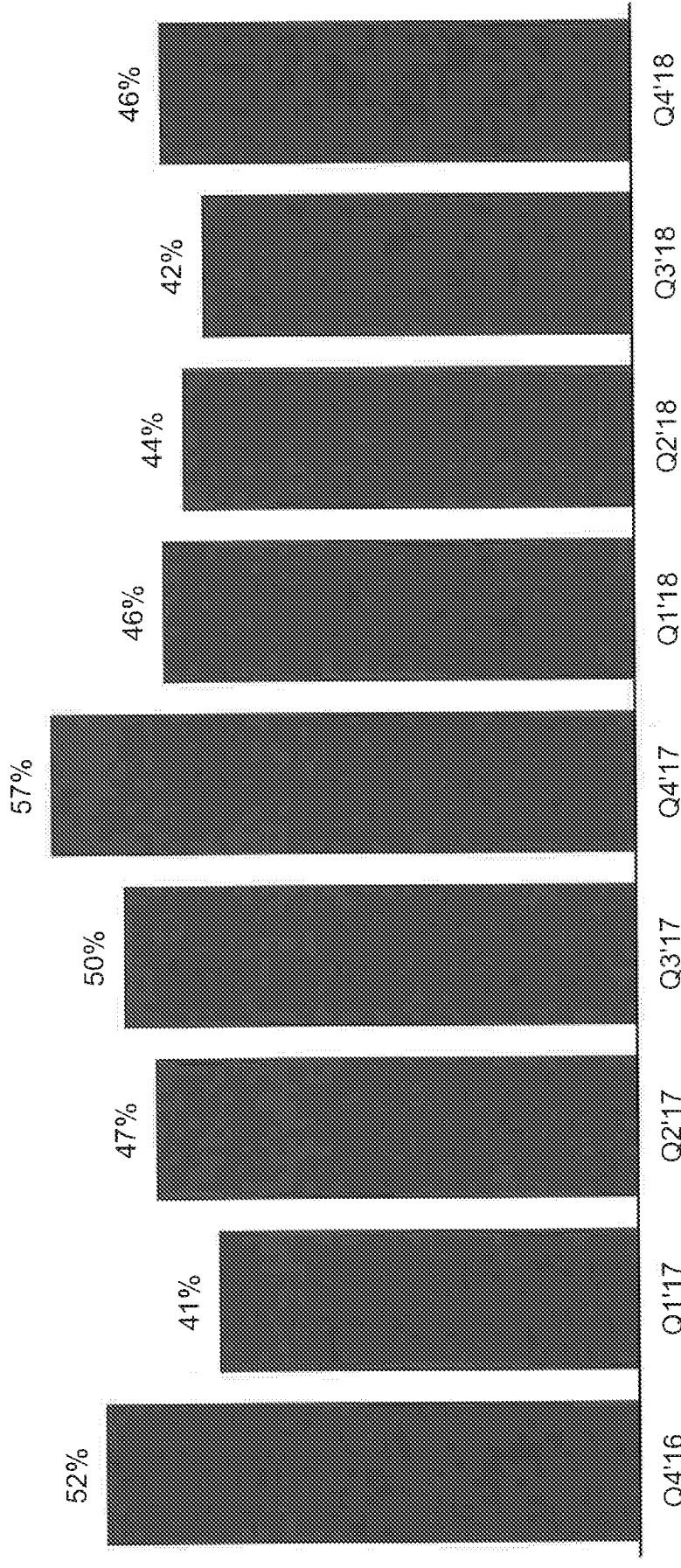
Income from Operations

In Millions



facebook

Operating Margin



facebook

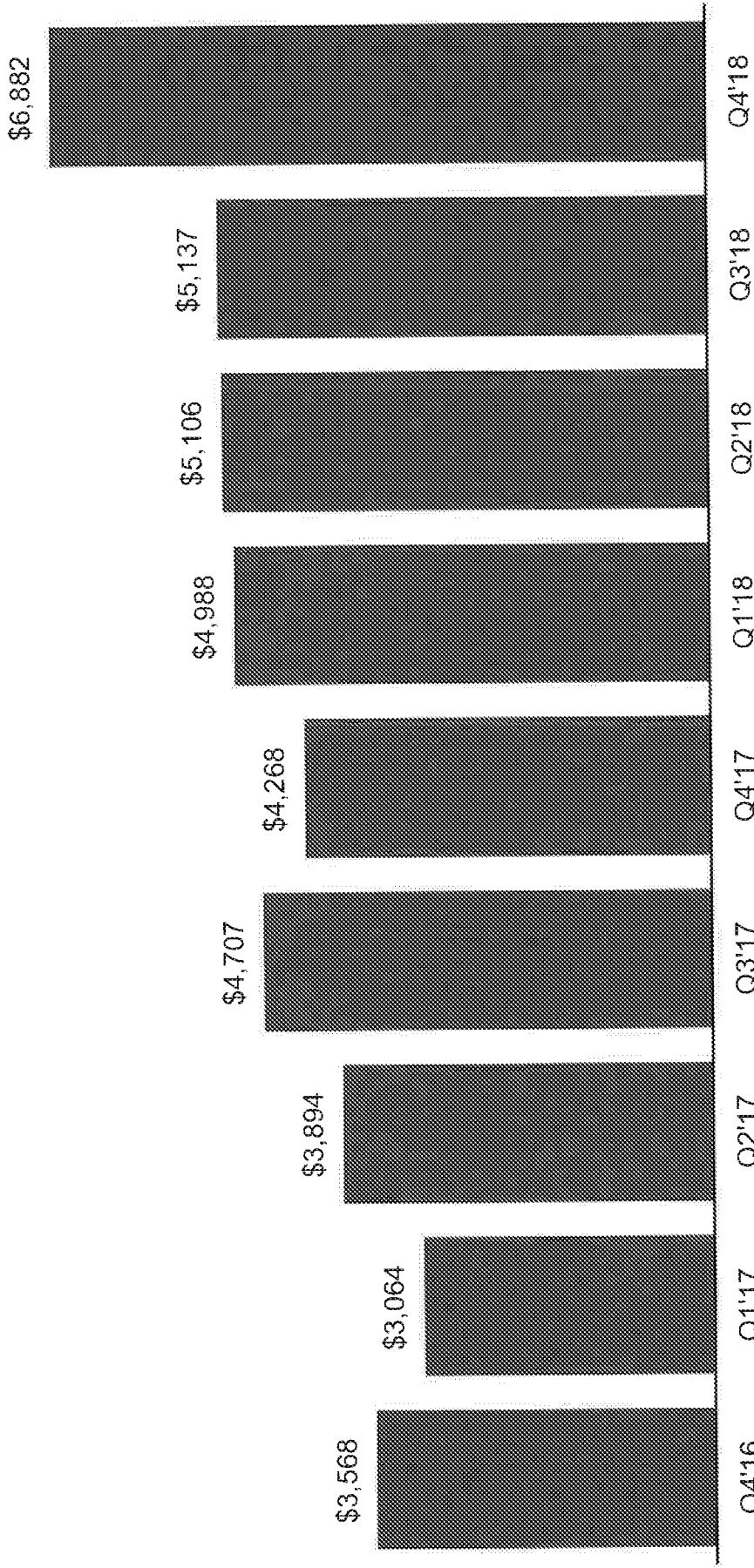
Effective Tax Rate

	Q4'16	Q1'17	Q2'17	Q3'17	Q4'17	Q1'18	Q2'18	Q3'18	Q4'18
(\$ in millions)	\$ 4,533	\$ 3,408	\$ 4,488	\$ 5,236	\$ 7,462	\$ 5,610	\$ 5,868	\$ 5,912	\$ 7,971
Income before provision for income taxes	965	344	594	529	3,194	622	762	775	1,089
Provision for income taxes	21%	10%	13%	10%	43%	11%	13%	13%	14%
Effective Tax Rate									

facebook

In December 2017, the U.S. Tax Cuts and Jobs Act (the "Tax Act") was enacted and significantly impacted the U.S. operating results of the Company. Our 2017 fourth quarter and full year 2017 provision for income taxes increased by \$227 million, which impacted our effective tax rate. EPS decreased by \$0.07 for both the fourth quarter and full year 2017. As a result of the Tax Act, starting in 2018, the U.S. statutory tax rate decreased from 35% to 21%.

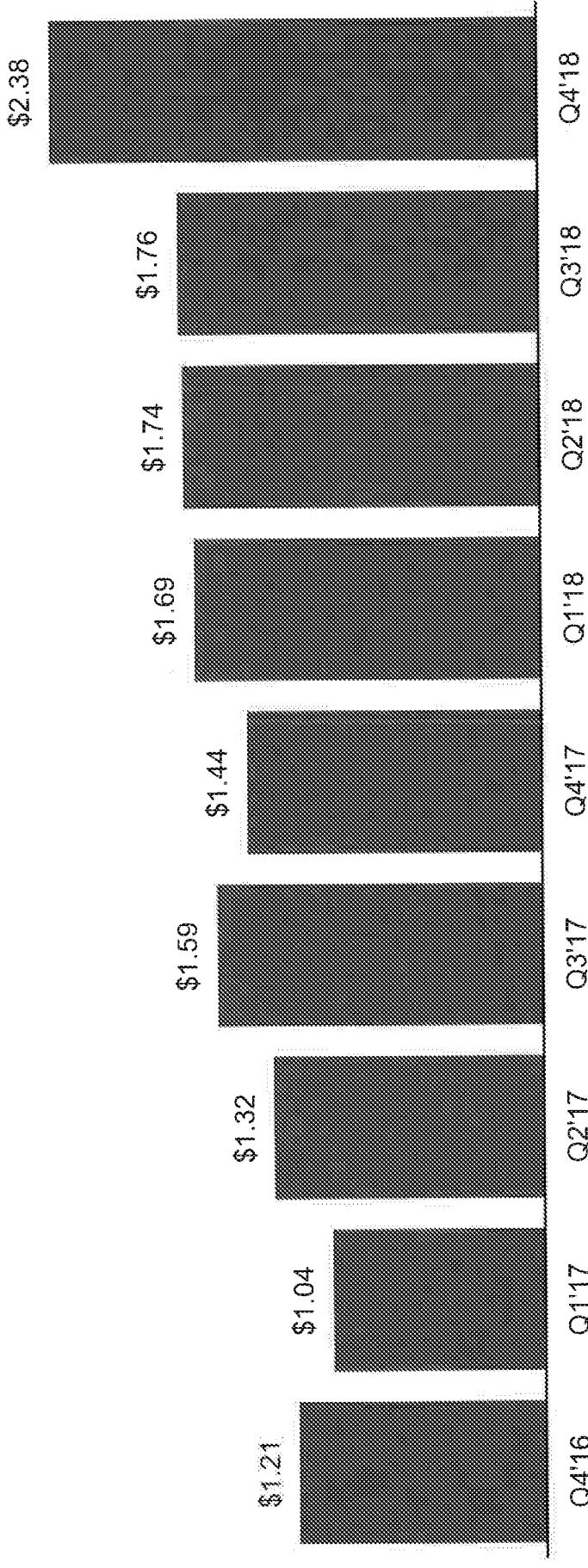
Net Income In Millions



In December 2017, the 2017 Tax Cuts and Jobs Act (the Tax Act) was enacted, and significantly impacted the U.S. tax law. As a result of this legislation, our fourth-quarter and full-year 2017 provision of income taxes increased by \$2.7 billion, which impacted our effective tax rate, net income and diluted earnings per share (EPS) for such periods. Our diluted EPS decreased by 3% in 2017, as a result of the Tax Act.

facebook

Diluted Earnings Per Share

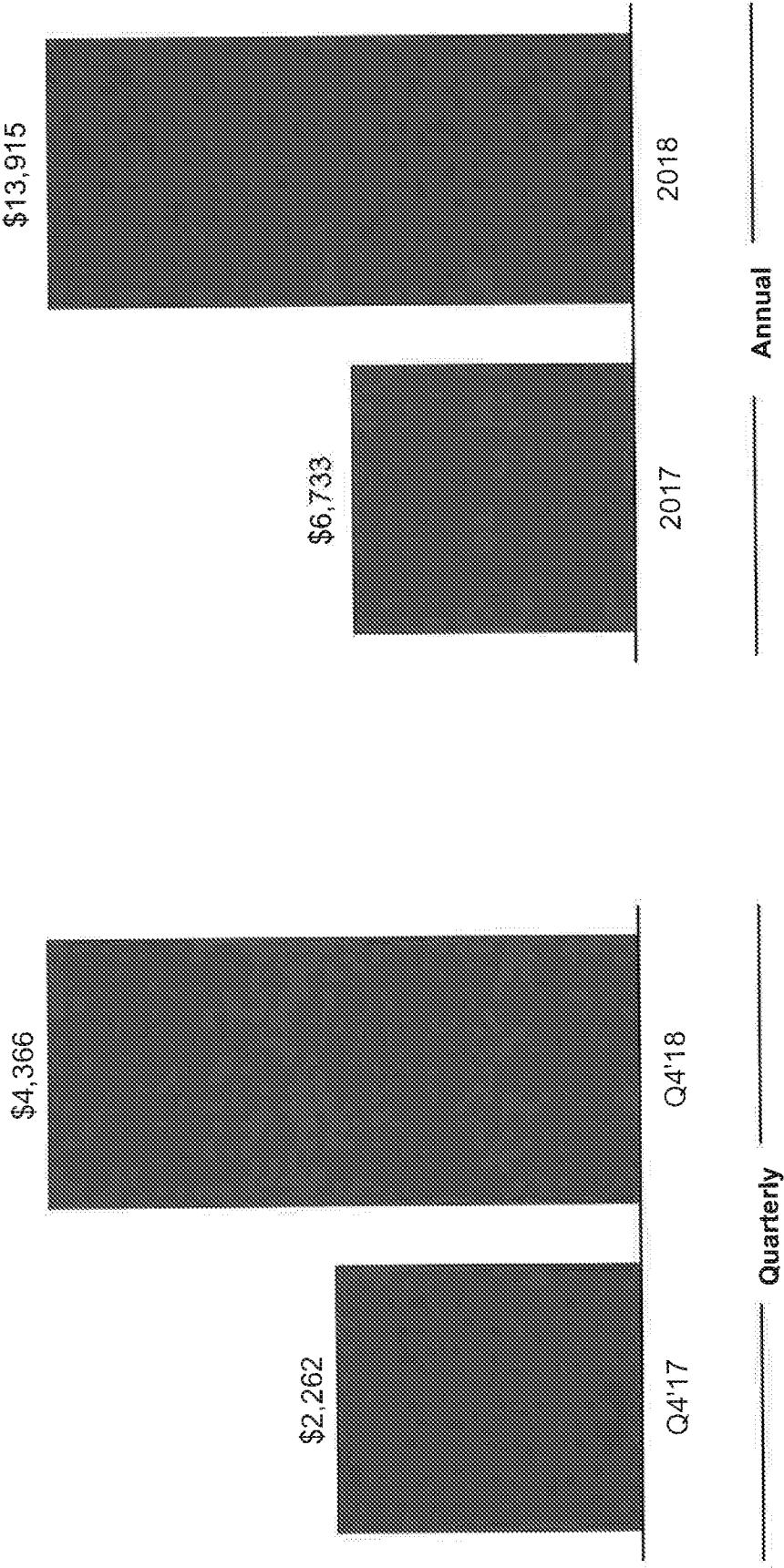


In December 2017, the 2017 Tax Cuts and Jobs Act (the “Tax Act”) was enacted and significantly impacted the U.S. federal tax laws, resulting in a reduction of income taxes imposed by approximately 22% on corporate earnings and diluted earnings per share (EPS) for fiscal year 2018 based on 2017 tax rates. As a result of the Tax Act, starting in 2018, the U.S. statutory tax rate decreased from 35% to 21%.

facebook

Capital Investments

In Millions



Capital investments for periods presented were related to net purchases of property and equipment.

facebook

Appendix

Free Cash Flow Reconciliation

	Q4'16	Q1'17	Q2'17	Q3'17	Q4'17	Q1'18	Q2'18	Q3'18	Q4'18
\$ Net cash provided by operating activities	\$ 4,930	\$ 5,058	\$ 5,360	\$ 6,128	\$ 7,670	\$ 7,860	\$ 6,289	\$ 7,496	\$ 7,684
Less: Purchases of property and equipment, net	1,269	1,271	1,444	1,755	2,262	2,812	3,459	3,343	4,366
Free Cash Flow	\$ 3,661	\$ 3,787	\$ 3,916	\$ 4,373	\$ 5,403	\$ 5,048	\$ 2,840	\$ 4,153	\$ 3,318

Free Cash Flow (FCF) is a non-GAAP financial measure that has limitations as an analytical tool and you should not consider it in isolation or as a substitute for analysis of other GAAP financial measures, such as free cash provided by operating activities. Some of the limitations of FCF are: (i) FCF does not reflect our future contractual commitments and (ii) other companies in our industry present similarly titled measures differently than we do. In addition, FCF is not intended to represent our residual cash flow available for dividends or other uses.



Limitations of Key Metrics and Other Data

The numbers for our key metrics, which include our daily active users (DAUs), monthly active users (MAUs), and average revenue per user (ARPU), are calculated using internal company data based on the activity of user accounts. While these numbers are based on what we believe to be reasonable estimates of our user base for the applicable period of measurement, there are inherent challenges in measuring usage of our products across large online and mobile populations around the world. In addition, we are continually seeking to improve our estimates of our user base, and such estimates may change due to improvements or changes in our methodology.

We regularly evaluate these metrics to estimate the number of "duplicate" and "false" accounts among our MAUs. A duplicate account is one that a user maintains in addition to his or her principal account. We divide "false" accounts into two categories: (1) user misclassified accounts, where users have created personal profiles for a business, organization, or non-human entity such as a pet (such entities are permitted on Facebook using a Page rather than a personal profile under our terms of service); and (2) undesirable accounts, which represent user profiles that we determine are intended to be used for purposes that violate our terms of service, such as spamming. The estimates of duplicate and false accounts are based on an internal review of a limited sample of accounts, and we apply significant judgment in making this determination. For example, to identify duplicate accounts we use data signals such as similar IP addresses or user names, and to identify false accounts we look for names that appear to be fake or other behavior that appears authentic to the reviewers. Our estimates may change as our methodologies evolve, including through the application of new data signals or technologies, which may allow us to identify previously undetected duplicate or false accounts and may improve our ability to evaluate a broader population of our users. Duplicate and false accounts are very difficult to measure at our scale, and it is possible that the actual number of duplicate and false accounts may vary significantly from our estimates.

In the fourth quarter of 2018, we estimate that duplicate accounts may have represented approximately 11% of our worldwide MAUs. We believe the percentage of duplicate accounts is meaningfully higher in developing markets such as the Philippines and Vietnam, as compared to more developed markets. In the fourth quarter of 2018, we estimate that false accounts may have represented approximately 5% of our worldwide MAUs. Our estimation of false accounts can vary as a result of episodic spikes in the creation of such accounts, which we have seen originate more frequently in specific countries such as Indonesia and Vietnam. From time to time, we may make product changes or take other actions to reduce the number of duplicate or false accounts among our users, which may also reduce our DAU and MAU estimates in a particular period.

Our data limitations may affect our understanding of certain details of our business. For example, while user-provided data indicates a decline in usage among younger users, this age data is unreliable because a disproportionate number of our younger users register with an inaccurate age. Accordingly, our understanding of usage by age group may not be complete.

In addition, our data regarding the geographic location of our users is estimated based on a number of factors, such as the user's IP address and self-disclosed location. These factors may not always accurately reflect the user's actual location. For example, a user may appear to be accessing Facebook from the location of the proxy server that the user connects to rather than from the user's actual location. The methodologies used to measure user metrics may also be susceptible to algorithm or other technical errors. Our estimates for revenue by user location and revenue by user device are also affected by these factors.

We regularly review our processes for calculating these metrics, and from time to time we may discover inaccuracies in our metrics or make adjustments to improve their accuracy, including adjustments that may result in the recalculation of our historical metrics. We believe that any such inaccuracies or adjustments are immaterial unless otherwise stated. We intend to disclose our estimates of the number of duplicate and false accounts among our MAUs on an annual basis. In addition, our DAU and MAU estimates will differ from estimates published by third parties due to differences in methodology.

The numbers of DAUs and MAUs discussed in this presentation, as well as ARPU, do not include Instagram, WhatsApp, or Oculus users unless they would otherwise qualify as such users, respectively, based on their other activities on Facebook.

In addition, other user engagement metrics included herein do not include Instagram, WhatsApp, or Oculus unless otherwise specifically stated.



Facebook Q4 2018 Results

facebook

investor.fb.com

ATTACHMENT B

[Advertiser Help](#)

A D S

Audiences

Last updated: Oct 25, 2017

See what locations have supported Designated Market Areas for ad targeting

These are the Designated Market Areas (DMAs) you can target your ads to.

DMA Code	DMA Name
500	Portland-Auburn
501	New York
502	Binghamton
503	Macon
504	Philadelphia
505	Detroit
506	Boston (Manchester)
507	Savannah
508	Pittsburgh
509	Ft. Wayne
510	Cleveland-Akron (Canton)
511	Washington, DC (Hagrstwn)

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515	Cincinnati
516	Erie
517	Charlotte
518	Greensboro-H.Point-W.Salem
519	Charleston, SC
520	Augusta-Aiken
521	Providence-New Bedford
522	Columbus, GA (Opelika, AL)
523	Burlington-Plattsburgh
524	Atlanta
525	Albany, GA
526	Utica
527	Indianapolis
528	Miami-Ft. Lauderdale
529	Louisville
530	Tallahassee-Thomasville
531	Tri-Cities, TN-VA
532	Albany-Schenectady-Troy
533	Hartford & New Haven
534	Orlando-Daytona Bch-Melbrn
535	Columbus, OH
536	Youngstown
537	Bangor

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541	Lexington
542	Dayton
543	Springfield-Holyoke
544	Norfolk-Portsmth-Newpt Nws
545	Greenville-N.Bern-Washngtn
546	Columbia, SC
547	Toledo
548	West Palm Beach-Ft. Pierce
549	Watertown
550	Wilmington
551	Lansing
552	Presque Isle
553	Marquette
554	Wheeling-Steubenville
555	Syracuse
556	Richmond-Petersburg
557	Knoxville
558	Lima
559	Bluefield-Beckley-Oak Hill
560	Raleigh-Durham (Fayetville)
561	Jacksonville
563	Grand Rapids-Kalmzoo-B.Crk
564	Charleston-Huntington

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569	Harrisonburg
570	Myrtle Beach-Florence
571	Ft. Myers-Naples
573	Roanoke-Lynchburg
574	Johnstown-Altoona-St Colge
575	Chattanooga
576	Salisbury
577	Wilkes Barre-Scranton-Hztn
581	Terre Haute
582	Lafayette, IN
583	Alpena
584	Charlottesville
588	South Bend-Elkhart
592	Gainesville
596	Zanesville
597	Parkersburg
598	Clarksburg-Weston
600	Corpus Christi
602	Chicago
603	Joplin-Pittsburg
604	Columbia-Jefferson City
605	Topeka
606	Dothan

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612	Shreveport
613	Minneapolis-St. Paul
616	Kansas City
617	Milwaukee
618	Houston
619	Springfield, MO
622	New Orleans
623	Dallas-Ft. Worth
624	Sioux City
625	Waco-Temple-Bryan
626	Victoria
627	Wichita Falls & Lawton
628	Monroe-El Dorado
630	Birmingham (Ann And Tusc)
631	Ottumwa-Kirksville
632	Paducah-Cape Girard-Harsbg
633	Odessa-Midland
634	Amarillo
635	Austin
636	Harlingen-Wsico-Brnsvl-Mca
637	Cedar Rapids-Wtrlo-Iwc &Dub
638	St. Joseph
639	Jackson, TB

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643	Lake Charles
644	Alexandria, LA
647	Greenwood-Greenville
648	Champaign&Sprngld-Decatur
649	Evansville
650	Oklahoma City
651	Lubbock
652	Omaha
656	Panama City
657	Sherman-Ada
658	Green Bay-Appleton
659	Nashville
661	San Angelo
662	Abilene-Sweetwater
669	Madison
670	Ft. Smith-Fay-Sprngdl-Rgrs
671	Tulsa
673	Columbus-Tupelo-W Pnt-Hstn
675	Peoria-Bloomington
676	Duluth-Superior
678	Wichita-Hutchinson Plus
679	Des Moines-Ames
682	Davenport-R.Islard-Moline

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692	Beaumont-Port Arthur
693	Little Rock-Pine Bluff
698	Montgomery-Selma
702	La Crosse-Eau Claire
705	Wausau-Rhineland
709	Tyler-Longview(Lfkn&Ncgd)
710	Hattiesburg-Laurel
711	Meridian
716	Baton Rouge
717	Quincy-Hannibal-Keokuk
718	Jackson, MS
722	Lincoln & Hastings-Krny
724	Fargo-Valley City
725	Sioux Falls(Mitchell)
734	Jonesboro
736	Bowling Green
737	Mankato
740	North Platte
743	Anchorage
744	Honolulu
745	Fairbanks
746	Biloxi-Gulfport
747	Juneau

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753	Phoenix (Prescott)
754	Butte-Bozeman
755	Great Falls
756	Billings
757	Boise
758	Idaho Falls-Pocatello(Jcksn)
759	Cheyenne-Scottsbluff
760	Twin Falls
762	Missoula
764	Rapid City
765	El Paso (Las Cruces)
766	Helena
767	Casper-Riverton
770	Salt Lake City
771	Yuma-El Centro
773	Grand Junction-Montrose
789	Tucson (Sierra Vista)
790	Albuquerque-Santa Fe
798	Glendive
800	Bakersfield
801	Eugene
802	Eureka
803	Los Angeles

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811	Reno
813	Medford-Klamath Falls
819	Seattle-Tacoma
820	Portland, OR
821	Bend, OR
825	San Diego
828	Monterey-Salinas
839	Las Vegas
855	Santabarbra-Sanmar-Sanluob
862	Sacramnto-Stkton-Modesto
866	Fresno-Visalia
868	Chico-Redding
881	Spokane

Learn how to target multiple locations at the same time. For more information on ad targeting, check out the audience targeting page.

Was this information helpful?

Yes No

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BASICS

BEST PRACTICES

<https://www.facebook.com/business/help/1501907650136620>

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1

MANAGE

TROUBLESHOOT

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EXHIBIT 2



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS

District of Columbia Government

Corporations Division
PO Box 92300
Washington DC 20090

Application for Certificate of Authority for Foreign Business & Professional Corporation

Use this form to register foreign business (for-profit) or professional corporation.

Filing Fee:
Foreign Business & Professional Corporation \$100 payable to DC Treasurer

Pursuant to the provisions of Business Corporation Act and Professional Corporation Act (D.C. Code, Title 29, Chapters 1 and 4), the undersigned corporation hereby applies for a Certificate of Authority to transact business in the District of Columbia, and for that purpose submits the following statement:

1. Entity Name: FACEBOOK, INC.	2. Corporate Designation elected in the District of Columbia: (Add Inc., Corp., Co. or P.C. if this designation is not required by the state of incorporation.)												
3. Incorporated under the laws of which state or country: DELAWARE	4. Date of Incorporation: 7/29/2004												
5. Term of Existence: PERPETUAL	6. Date commenced or will commence transacting business in the District of Columbia: (If you started business before you registered, you must file a 2-year report and pay applicable fees.) 12/31/2007												
7. Address of the corporation in the state where it is incorporated. (If the principal address is outside the state of incorporation, give the RA in the state of incorporation.) Corporation Service Company, 2711 Canterbury Rd, Ste 456 Wilmington, DE 19898	8. Name of Registered Agent and address of registered office in District of Columbia: (Attach form RA-1 for RA's consent to this application.) Corporation Service Company, 1090 Vermont Avenue N.W. Washington D.C. 20005												
9. Briefly describe the specific proposed activity the corporation will transact in the District of Columbia. "General purpose" is not an acceptable description. Attach sheet if needed. ONLINE SOCIAL NETWORKING													
10. FOR PROFESSIONAL CORPORATIONS ONLY: All officers, directors and shareholders of the corporation are licensed to practice the profession for which the corporation is incorporated. In the case of a single person corporation, the Secretary of the corporation need not be so licensed.													
11. List all corporation directors and officers (attach list if needed): <table border="1"><thead><tr><th>TITLE</th><th>NAME</th><th>ADDRESS</th></tr></thead><tbody><tr><td>SEE ATTACHED</td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></tbody></table>		TITLE	NAME	ADDRESS	SEE ATTACHED								
TITLE	NAME	ADDRESS											
SEE ATTACHED													
12. Attach an original Certificate of Good Standing (Certificate of Existence) from Registration Authority in the State/Country of incorporation that is not over 30 days old. (Certificate of good standing from Tax or Licensing Authority will not be sufficient.)													
13. Select corporate officer executing this form: <input type="checkbox"/> President <input checked="" type="checkbox"/> Vice-President, General Counsel <i>Mark Zuckerberg</i>													
14. Signature:													
If you sign this application, you agree that you understand that anyone who makes a false statement anywhere on it can be punished by criminal penalties of a fine up to \$1000, imprisonment up to 180 days, or both, under DCOC § 22-2405.													

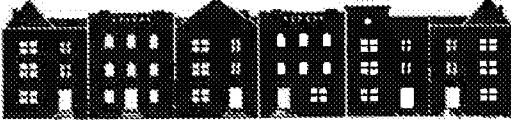
DOCA - Department of Consumer and Regulatory Affairs
Corporations Division
PO Box 92300
Washington, DC 20090
PHONE (202) 552-3432

DOCA - Department of Consumer and Regulatory Affairs
Corporations Division
PO Box 92300
Washington, DC 20090
PHONE (202) 552-3432

Please check dcra.dc.gov to view organizations required to register, to search business names, to get step-by-step guidelines to register an organization, to search registered organizations, and to download forms and documents. Just click on "Corporate Registrations."

SF MO/ln10011

 <p>DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS District of Columbia Government</p> <p>Corporations Division</p>									
<p align="center">Form BRA-25, Version 2, July 2010.</p> <p align="center">Two-Year Report for Domestic & Foreign Business & Professional Corporations</p>									
<p>Year of Filing: <i>2010</i></p> <p>Filing Number: <i>371313</i></p> <p>Date of Filing: <i>04/25/2011</i></p> <p>Filing Fee: <i>\$100</i></p>									
<p>1. Entity Name: FACEBOOK, INC.</p>									
<p>2. Organized under the laws of which state or country: DELAWARE</p>									
<p>3. If this is a foreign corporation, address of principal office in state or country where it is organized: c/o Corporation Service Company, 2711 Centerville Road Suite 400, Wilmington DE 19808</p>									
<p>4. Name of Registered Agent and address of registered office in DC: Corporation Service Company, 1090 Vermont Avenue, N.W., Washington DC 20005</p>									
<p>5. Brief statement of business affairs conducted in DC: Online social network</p>									
<p>6. If this is domestic corporation, address of principal office in DC: 100 Brannan Street, San Francisco, CA 94103</p>									
<p>7. List all corporation directors and officer's (attach list if needed)</p> <table border="1"> <thead> <tr> <th>TITLE</th> <th>NAME</th> <th>ADDRESS</th> </tr> </thead> <tbody> <tr> <td colspan="3">See attached</td> </tr> </tbody> </table>		TITLE	NAME	ADDRESS	See attached				
TITLE	NAME	ADDRESS							
See attached									
<p>DOMESTIC FOR PROFIT CORPORATIONS ANSWER 13-17</p> <table border="1"> <thead> <tr> <th>NO. OF SHARES</th> <th>CLASS OF SHARES</th> <th>PAR VALUE PER SHARE</th> <th>NUMBER OF SHARES</th> </tr> </thead> <tbody> <tr> <td colspan="4">Please see attached</td> </tr> </tbody> </table>		NO. OF SHARES	CLASS OF SHARES	PAR VALUE PER SHARE	NUMBER OF SHARES	Please see attached			
NO. OF SHARES	CLASS OF SHARES	PAR VALUE PER SHARE	NUMBER OF SHARES						
Please see attached									
<p>8. Aggregate number of shares corporation has authority to issue</p>									
<p>9. Aggregate number of shares issued</p>									
<p>FOREIGN FOR PROFIT CORPORATIONS ANSWER 12-14</p> <table border="1"> <thead> <tr> <th>DATE ORGANIZED</th> <th>TERM OF EXISTENCE AUTHORIZED</th> <th>12. Is corporation in good standing in state / country where it is organized?</th> </tr> </thead> <tbody> <tr> <td>07/24/2004</td> <td>Perpetual</td> <td><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </tbody> </table>		DATE ORGANIZED	TERM OF EXISTENCE AUTHORIZED	12. Is corporation in good standing in state / country where it is organized?	07/24/2004	Perpetual	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
DATE ORGANIZED	TERM OF EXISTENCE AUTHORIZED	12. Is corporation in good standing in state / country where it is organized?							
07/24/2004	Perpetual	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No							
<p>PROFESSIONAL CORPORATIONS ONLY</p> <p>Domestic Professional Corporations - Answer 13 and 14A; Foreign Professional Corporation - Answer 14B</p> <p>13. If you are a Domestic Professional Corporation, you must file a Statement of Organization and a Statement of Good Standing annually. If you are a Foreign Professional Corporation, you must file a Statement of Organization and a Statement of Good Standing annually. You must also file a Statement of Organization and a Statement of Good Standing annually if you have a principal place of business in the District of Columbia and the above information.</p>									
<p>15. Select and indicate corporate officer executing this:</p> <table border="1"> <tr> <td><input checked="" type="checkbox"/> President / Vice-President</td> <td><input checked="" type="checkbox"/> Secretary / Assistant Secretary</td> </tr> <tr> <td><input type="checkbox"/> Treasurer / Assistant Treasurer</td> <td colspan="2">16. Signature</td> </tr> </table> <p>If you sign anywhere on this Two-Year Report Form, you agree that you understand that anyone who makes a false statement anywhere on it can be fined up to \$1000, imprisonment up to 180 days, or both, under DCCO § 28-2408.</p> <p>Please sign and date below:</p> <p>Facebook, Inc. 100 Brannan Street, San Francisco, CA 94103 Phone (415) 535-0000</p>		<input checked="" type="checkbox"/> President / Vice-President	<input checked="" type="checkbox"/> Secretary / Assistant Secretary	<input type="checkbox"/> Treasurer / Assistant Treasurer	16. Signature				
<input checked="" type="checkbox"/> President / Vice-President	<input checked="" type="checkbox"/> Secretary / Assistant Secretary								
<input type="checkbox"/> Treasurer / Assistant Treasurer	16. Signature								
<p style="text-align: right;"><i>[Signature]</i></p> <p style="text-align: right;">RECEIVED APR 25 2011</p>									



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
District of Columbia Government
Corporations Division

Two-Year Report for Domestic & Foreign Filing Entity

Year of Filing: 2014

File Number: 291313

Date of Filing: 4/1/2014 11:28 AM

Filing Fee: \$300.00

First: Entity Name:
FACEBOOK INC.

Second: Organized under the laws of which state or country:
Delaware, United States

Third: Address of principal office:
1601 WILLOW ROAD
MENLO PARK, California 94025

Fourth: Name of Registered Agent and address of registered office in DC:
CORPORATION SERVICE COMPANY
1090 VERMONT AVE. NW
Washington, District of Columbia 20005

Fifth: Brief statement of business affairs conducted in DC:
Other
INTERNET SERVICES

Sixth: List all entity governors (attach list if needed):

Name	Address
COLIN STRETCH	1601 WILLOW ROAD, MENLO PARK, California 94025
MARK ZUCKERBERG	1601 WILLOW ROAD, MENLO PARK, California 94025
TED PRICE	1601 WILLOW ROAD, MENLO PARK, California 94025
DAVID KLING	1601 WILLOW ROAD, MENLO PARK, California 94025

Seventh: Is foreign filing entity in good standing in state / country where it is organized? Yes

Eighth: Name of the Governor or Authorized Person:

DAVID KLING

If you sign this form you agree that anyone who makes a false statement can be punished by criminal penalties of a fine up to \$1000, imprisonment up to 180 days, or both, under DCOC § 22-2405;

E-Signed



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
District of Columbia Government
Corporations Division

Two-Year Report for Domestic & Foreign Filing Entity

Year of Filing: 2016

File Number: 291313

Date of Filing: 3/31/2016 6:52 PM

Filing Fee: \$300.00

First: Entity Name:
FACEBOOK INC.

Second: Organized under the laws of which state or country:
Delaware, United States

Third: Address of principal office:
1601 WILLOW ROAD
MENLO PARK, California 94025

Fourth: Name of Registered Agent and address of registered office in DC:
CORPORATION SERVICE COMPANY
1090 VERMONT AVE. NW
Washington, District of Columbia 20005

Fifth: Brief statement of business affairs conducted in DC:
Other
INTERNET SERVICES

Sixth: List all entity governors (attach list if needed):

Name	Address
COLIN STRETCH	1601 WILLOW ROAD, MENLO PARK, California 94025
MARK ZUCKERBERG	1601 WILLOW ROAD, MENLO PARK, California 94025
TED PRICE	1601 WILLOW ROAD, MENLO PARK, California 94025
DAVID KLING	1601 WILLOW ROAD, MENLO PARK, California 94025
ERSKINE BOWELS	1601 WILLOW ROAD, MENLO PARK, California 94025
JAN KOUM	1601 WILLOW ROAD, MENLO PARK, California 94025
JAN KOUM	1601 WILLOW ROAD, MENLO PARK, California 94025

Seventh: Is foreign filing entity in good standing in state / country where it is organized?

Eighth: Name of the Governor or Authorized Person:

DAVID KLING

If you sign this form you agree that anyone who makes a false statement can be punished by criminal penalties of a fine up to \$1000, imprisonment up to 180 days, or both, under DCOC § 22-2405!



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
District of Columbia Government
Corporations Division

Two-Year Report for Domestic & Foreign Filing Entity

Year of Filing: 2018

File Number: 291313

Date of Filing: 3/27/2018 1:18 PM

Filing Fee: \$300.00

First: Entity Name:
FACEBOOK INC.

Second: Organized under the laws of which state or country:
Delaware, United States

Third: Address of principal office:
1601 WILLOW ROAD
MENLO PARK, California 94025

Fourth: Name of Registered Agent and address of registered office in DC:
CORPORATION SERVICE COMPANY
1090 VERNONT AVE. NW
Washington, District of Columbia 20005

Fifth: Brief statement of business affairs conducted in DC:
Other
INTERNET SERVICES

Sixth: List all entity governors (attach list if needed):

Name	Address
COLIN STRETCH	1601 WILLOW ROAD, MENLO PARK, California 94025
MARK ZUCKERBERG	1601 WILLOW ROAD, MENLO PARK, California 94025
TED PRICE	1601 WILLOW ROAD, MENLO PARK, California 94025
DAVID KLING	1601 WILLOW ROAD, MENLO PARK, California 94025

Seventh: Is foreign filing entity in good standing in state / country where it is organized? Yes

Eighth: Name of the Governor or Authorized Person:

DAVID KLING

If you sign this form you agree that anyone who makes a false statement can be punished by criminal penalties of a fine up to \$1000, imprisonment up to 180 days, or both, under DCOC § 22-2405.

E-Signed

EXHIBIT 3

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. CASHCALL, INC., WS FUNDING, LLC. J. PAUL REDDAM, Defendants.	2015 CA 006904 B Judge Jennifer A. Di Toro
--	--

ORDER

This matter comes before the Court on Defendants CashCall, Inc.'s, WS Funding, LLC's, and J. Paul Reddam's *Motion to Dismiss Plaintiff's First Amended Complaint* ("Motion to Dismiss"), filed January 15, 2016, Plaintiff District of Columbia's *Opposition*, filed on February 1, 2016 and Defendants' *Reply in Support of Its Motion to Dismiss*, filed February 9, 2016.

BACKGROUND

On April 15, 2016, the Court issued an Order denying Defendants' *Motion to Dismiss* ("Order") on the ground that one of the exhibits attached to the motion, the affidavit from Defendant Reddam, exceeded the scope of a motion to dismiss under Rule 12(b)(6) and therefore converted the motion to dismiss into a motion for summary judgment. Order 6-7 (Apr. 15, 2016). In the body of that Order, the Court acknowledged that Mr. Reddam's affidavit was submitted "to support the argument that this Court cannot exercise personal jurisdiction over him." *Id.* at 6. At the motion hearing on May 12, 2016, the Court granted Defendants' *Motion for Reconsideration Pursuant to District of Columbia Superior Court Rule 59 (e)* and, accordingly, will reconsider the *Motion to Dismiss* as it is not converted to a motion for summary judgment. Accordingly, the April 15, 2016 Order is vacated.

FINDINGS OF FACT

Plaintiff District of Columbia filed its initial Complaint in this matter on September 8, 2015. Plaintiff filed an Amended Complaint on December 10, 2015. *See* Am. Compl. Plaintiff alleges that Defendants CashCall, Inc. (“CashCall”), WS Funding, LLC (“WS Funding”), and J. Paul Reddam (“Reddam”) violated District of Columbia law by engaging in unlawful trade practices and collecting illegally high rates of interest on consumer loans. Am. Compl. ¶ 1. In particular, Plaintiff argues that Defendants are guilty of violating: D.C. Code §28-3814(g), the District’s debt collection law; D.C. Code § 28-3301(a), the District’s usury law; and D.C. Code § 28-3904, the District’s Consumer Protection Procedures Act (hereinafter “CPPA”). *Id.* ¶ 1. Plaintiff alleges that CashCall is a California Corporation that buys and collects consumer loans originated by Western Sky Financial LLC, and that WS Funding is a wholly owned subsidiary of CashCall that assists CashCall in these services. *Id.* ¶¶ 5-6. Plaintiff asserts that Defendant Reddam is the President of both CashCall and WS Funding and acts in other managerial capacities for both businesses. *Id.* ¶ 8. Plaintiff further alleges that Defendants engaged in a scheme to issue illegal high-interest loans to District of Columbia consumers, as follows: beginning in 2010, Western Sky offered consumers loans ranging from \$500 to \$10,000, sometimes charging interest rates exceeding 340%, rates Plaintiff contends are usurious. *Id.* ¶¶ 10-11, 15. Many of these loans were made to District of Columbia borrowers via the internet. *Id.* ¶ 13. Plaintiff asserts that Western Sky deposited the loan proceeds into the consumers’ bank accounts after consumers executed the loan agreements; the loan proceeds were typically used for personal, household, or family expenses and were titled as “Western Sky Consumer Loan Agreement[s].” *Id.* ¶ 14. Defendants were contractually obligated to purchase all loans from Western Sky and to provide Western Sky an open-end \$500,000 line of credit. *Id.* ¶ 15. Plaintiff

contends that this lending arrangement was “an intentional scheme to disguise Defendants’ true interest in the loans.” *Id.* ¶ 15. Plaintiff brings two causes of action. In Count One, Plaintiff alleges that Defendants violated the District’s debt collection law, D.C. Code § 28-3814(g) and D.C. Code 28-3301(a), because the loans at issue exceeded the District’s lawful interest per annum. *Id.* ¶ 26-27. Count Two argues that Defendants violated the CPPA, D.C. Code § 28-3904, by failing to disclose or misrepresenting the fact that their loans, and accompanying interest rates, were unlawful, and attempting to collect interest from these loans in violation of various D.C. statutes. *Id.* ¶¶31-34.

Defendants CashCall, WS Funding, and Reddam filed their joint *Motion to Dismiss Plaintiff’s First Amended Complaint* on January 15, 2016, arguing that the Court does not have subject matter jurisdiction over the District’s claims, personal jurisdiction over Defendant Reddam, that the CPPA does not apply to the Defendants as they are not “merchants” as defined under the CPPA, that the claim for restitution prior to September 2014 must be dismissed under the Statute of Limitations, that the Debt Collection claim should be dismissed because the Usury Statute does not apply to the Western Sky Loans, and the claims are insufficiently pled. Mot. to Dismiss 4-14. In particular, Defendants state that Defendant Reddam is not subject to personal jurisdiction in D.C. because he owns no property in D.C. and has never interacted with a D.C. resident who has borrowed money from Western Sky, and therefore, has insufficient contacts with the District to subject him to the Court’s jurisdiction. *Id.* 4-5. Defendant Reddam argues that engaging in the routine managerial activities of a company with borrowers in the District of Columbia does not constitute the kind of purposeful activity connecting Defendant Reddam to the District such that this Court can assert jurisdiction over him. *Id.* 5. Second, the Defendants state that Count I should be dismissed under Superior Court Rule of Civil Procedure 12(b)(6),

because the District of Columbia's Debt Collection law does not apply to the loans at issue. *Id.* 7 – 9. Defendants argue that the loan recipients were not “consumers” as defined by the law, as they did not purchase, lease, or receive consumer goods or services. *Id.* Third, Defendants claim that Plaintiff’s CPPA claim should also be dismissed under Rule 12(b)(6) as Defendants do not qualify as “merchants” under the statute; the District has failed to allege a consumer-merchant relationship between borrowers and Defendants, and other material facts are lacking from the Amended Complaint. *Id.* 10. Fourth, Defendants argue that the Court lacks subject matter jurisdiction over the District’s claims, as the claims relate to loans originated by Western Sky, which is an Indian tribe with independent sovereignty to legislate activities on their reservation, including activities by nonmembers. *Id.* 14. Defendants argue that Plaintiff’s claim for restitution under the Debt Collection Law for payments made before September 8, 2014 must be dismissed, as the statute of limitations for the Debt Collection law is one year. Mot. 12. Defendants attach two exhibits in support of the Motion to Dismiss, a Western Sky Consumer Loan Agreement and an Affidavit of J. Paul Reddam. *See* Def. Exs. 1-2. Finally, Defendants allege that the District did not sufficiently allege the elements necessary to establish that they acted as “debt collector” or performed “debt collection,” Mot. 10, and that Cheyenne River Sioux Tribe law must be applied.

Plaintiff District of Columbia filed its opposition on February 1, 2016. Plaintiff argues that: (1) all Defendants, including Defendant Reddam, are subject to personal jurisdiction in D.C. for engaging in tortious conduct within the District; (2) the District of Columbia’s Debt Collection Law applies to Defendants’ actions because the plain text of the statute applies to all loans issued in DC.; (3) Defendants are “merchants” under the CPPA; (4) the District’s claims for restitution is not time-barred; (5) and there is subject matter jurisdiction for the Court to hear

these claims as tribal sovereign immunity does not apply to the Defendants who entered into the loan agreements and collection activity, as none of the Defendants are members of an Indian tribe. Opp. 2.

Defendants filed a reply to Plaintiff's Opposition on February 9, 2016, largely reiterating claims and defenses put forth in the Motion to Dismiss. Defendants further argue that Plaintiff improperly raises new allegations in Plaintiff's opposition that are not contained in the complaint, and improperly characterize the existing law. Rep. 1-2.

Conclusions of Law

Defendants argue that Plaintiff's Complaint should be dismissed because the Complaint fails to state a claim upon which relief may be granted as required by Super. Ct. Civ. R. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543-44 (D.C. 2011); *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). The Court must construe the complaint in the light most favorable to the Plaintiff and must take the facts alleged in the complaint as true. *Casco Marina Dev. v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003). These factual allegations in the complaint, however, "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555-56 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Subject matter jurisdiction over the District's claims

The District's Amended Complaint alleges that Defendants CashCall and WS Funding bought, serviced and collected on consumer loans originated by Western Sky, a former South Dakota company, and that based on existing contractual agreements with Western Sky, Defendants should be considered the *de facto* lenders of those loans. Am. Compl. ¶¶ 5-6, 15. Defendants argue that because Western Sky was affiliated with the Cheyenne River Sioux Tribe, ("the "Tribe"), tribal immunity precludes this Court from exercising subject matter jurisdiction over them. This Court agrees that as part of their residual sovereignty, tribes retain power to legislate activities on the reservation, including certain activities by nonmembers. *See Mot. to Dismiss at 14, citing Plains Commerce Bank v. Long Family Land and Cattle Co., Inc.*, 491 F.3d 878, 884 (8th Cir. 2007). A tribe's civil jurisdiction may also extend to non-Indians in appropriate circumstances, *Montana v. United States*, 450 U.S. 544, 565 (1981), as "[s]tate laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." *McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 170-71 (1973). Defendants therefore argue that because the District bases its claims in its CPPA, the case should be dismissed as one seeking to improperly regulate the activities of a "Cheyenne River Sioux entity and because the loans themselves originated on the Reservation." Mot. to Dismiss 14.

Plaintiffs argue that tribal immunity should not extend in the case before the Court, as 1) tribal immunity generally applies only to the tribal government itself; 2) tribal immunity does not shield tribe members engaged in personal business, even when on tribal land, and 3) tribal immunity does not extend to nonmembers of a tribe. District's Opp. 18 – 19. The Court concludes that at this stage of the litigation, sufficient facts exist in the record to support Plaintiff's claims. Mr. Reddam's affidavit, on which Defendants rely in their immunity claim,

states only that Western Sky (incorporated in South Dakota), had a license to operate on the Reservation. See Reddam Aff. at ¶ 3. This fact is not contradicted in the Complaint. In their Complaint, the only Tribe member named is the owner of Western Sky. Tribal immunity does not extend to nonmembers of a tribe, unless they are shown to have been “doing business on the reservation for the benefit of reservation Indians.” *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 512 (1991); *Pourier v. South Dakota Dep’t of Revenue*, 658 N.W.2d 395, 404 (S.D. 2003). Construing the Amended Complaint in the light most favorable to the Plaintiff, the Court cannot conclude that tribal immunity precludes this Court from exercising subject matter jurisdiction.

Personal jurisdiction over Defendant Reddam

Defendants state that Mr. Reddam has insufficient contacts with the District to subject him to the Court’s jurisdiction because he owns no property in D.C. and has never interacted with a D.C. resident who has borrowed money from Western Sky. Mot. to Dismiss 4-5. Defendant Reddam argues that engaging in the routine managerial activities of a company with borrowers in the District of Columbia does not constitute purposeful activity connecting Defendant Reddam to the District such that this Court can assert jurisdiction over him. *Id.* 5.

Plaintiffs respond that based on Mr. Reddam’s participation in and control over allegedly tortious conduct in the District of Columbia, this Court has personal jurisdiction over him. In its Complaint, the District alleges that Defendants CashCall and WS Funding served as the *de facto* lender of, and collected on, loans made to District consumers that included interest rates that exceeded the District’s usury cap. Am. Compl. ¶¶ 9-16. The District further alleges that, because Reddam was the corporate officer with managerial authority over CashCall and WS Funding, was involved in their daily operation, and was responsible for “developing and implementing all

their major company policies,” Reddam played a decisive role in the lending and collection at issue, regardless of whether he conducted those activities in the District of Columbia. *Id.* at ¶¶ 8, 22-23.

It is clear from the D.C. CPPA that individuals may be held liable for CPPA claims committed by a corporation if the individual participated directly in the unlawful trade practice at issue, or had the authority to control, and knowledge of, the practice. *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 498 (D.C. Cir. 2015). The Court concludes that the District’s jurisdictional allegations against Reddam, namely that he had control over and participated in the allegedly unlawful conduct of the corporate Defendants, including making loans to District consumers and collecting on those loans in the District, are sufficient claims of purposeful activity connecting Defendant Reddam to the District such that this Court can assert personal jurisdiction over him.

Application of the CPPA to the Defendants

Defendants argue that the CPPA claim should be dismissed as there is no consumer-merchant relationship between Defendants and the borrowers. Mot. to Dismiss 10. Defendants argue that because the CPPA applies only to “merchants,” defined as those who “supply goods or services which are or would be the subject matter of a trade practice,” the Court should conclude that because WS Funding purchased the loans at issue from Western Sky and CashCall serviced and collected on the loans, the Defendants cannot be found to have “offered for sale or supplied goods or services to consumers,” either in the form of additional credit or otherwise, that could be the subject matter of a trade practice. Mot. to Dismiss 12.

Plaintiff alleges that Defendants violated four provisions of the CPPA, which prohibit unlawful trade practices by merchants. Am. Compl. ¶¶ 28-34; D.C. Code § 28-3904. The CPPA

does not limit the definition of “merchant” to one who directly supplies goods or services to consumers, but includes any person who is connected with the supply-side of a consumer transaction. *See Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003 (D.C. 1989). The Amended Complaint sets forth the following facts: that Defendants, “in the ordinary course of business, offer to sell or supply goods or services which are or would be the subject matter of a trade practice, and therefore, are merchants”. Am Compl. ¶ 30. Plaintiff argues that Defendants CashCall and WS Funding placed themselves on the supply side of the consumer transactions through their lending arrangement with Western Sky; Western Sky “only served the administrative function of loan origination, while CashCall and WS Funding funded the consumer loans in question, participated in the origination of the loans, purchased the loans the very same day they were made, and serviced the loans after they were accepted by consumers.” Pl. Opp. at 14; *see, e.g.* Am. Compl. ¶ 20. The Amended Complaint further alleges that Defendants CashCall and WS Funding are subject to personal jurisdiction based on the alleged transaction of illegal debt collection activities in the District of Columbia, and the resulting alleged tortious injury to District consumers. Am Compl. ¶¶ 9-32. Plaintiff alleges that Defendants reached into the District through the Internet, collection mailings and calls, deposits and withdrawals to and from bank accounts belonging to District customers. Am. Compl. ¶¶ 13-16. The Court therefore concludes that Plaintiff has pled sufficient facts to survive a motion to dismiss and allows the claim that Defendants have engaged in unlawful trade practices under the CCPA to proceed.

Claim for restitution prior to September 2014 under the Statute of Limitations

Defendants argue that all of the District’s claims for restitution for payments made before September 8, 2014 should be dismissed because the statute of limitation for payments under the

Debt Collection Law is one year. Mot. to Dismiss at 12.¹ The District's Recovery of Usury statute, D.C. Code § 28-3304, states that the applicable limitations period for any restitution claim by a private entity is one year. Defendants argue that because a claim by a government entity for restitution seeks to vindicate a "private" right, such claims should be subject to the same limitations period applicable to a direct claim by the individual for whose benefit the government acts. *Id.*, citing *United State v. Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973).

D.C. Code § 28-3909(a) authorizes the Attorney General to seek restitution for a variety of consumer protection violations and includes no time limitations. The Court concludes that District of Columbia law supports the conclusion that the District of Columbia is not subject to the statute of limitations that would otherwise apply to an analogous private right of action. D.C. Code § 12-301 (default statute of limitations for private actors "does not apply . . . to actions brought by the District of Columbia government.") Accordingly, Plaintiff's claim for restitution under § 28-3909(a) is not time-limited. Likewise, the Court concludes that Defendants' contention that as claims for restitution seek to vindicate "private" rights and the limitation on analogous private suits is one year, does not lead to the conclusion that the claims for restitution are time-barred. While restitution may be used to restore individual consumers, courts have concluded that restitution obtained by the District under the CCPA is "penal, and not primarily to compensate individuals." See *Suter v. District of Columbia*, No. Civ. A. 2005-2118, 2005 WL 2989336, at *7 (D. Md. Nov. 7, 2005). Aff'd 2006 WL 1476200 (4th Cir. May 25, 2006). Accordingly, the Court concludes that the claims for restitution for payments made before September 8, 2014 survive.

Application of the Usury Statute to the Western Sky Loans

¹ Defendants agree that the statute of limitations, if applicable, applies only to the claim for restitution, and not to the demand for Civil Money Penalties and other relief.

Defendants argue that claims under the Debt Collection Law should be dismissed as a matter of law because the recipients of the loans originated by Western Sky were not “consumers” as defined by District of Columbia law. Mot. to Dismiss 7; D.C. Super. Ct. R. 12(b)(6). Defendants point to D.C. Code § 28-3301(i), which provides that “for the purposes of this chapter, the term ‘consumer’ shall have the same meaning as in § 28-3901(a)(2),” which defines “consumer” when used as a noun to mean “a person who, other than for purposes of resale, does or would purchase, lease (as lessee), or receives consumer goods or services....” Mot. to Dismiss 8. Defendants assert that Plaintiffs have pled no allegations of consumer credit transactions or of individuals purchasing, leasing, or receiving consumer goods or services. *Id.* 9. Defendants further argue that the loan purchasers are not consumers because loans involve money, which is “a medium of exchange,” not a purchase or lease of goods or services. *Id.*, citing *Jones v. Law Office of Dufek*, 77 F.Supp. 3d 134, 139 (D.D.C. 2015). Defendants contend that because Western Sky lent money that was unconnected to the purchase, lease, or receipt of consumer goods or services, the usury law does not apply.

Plaintiff notes that the CPPA’s definition of “consumer,” when used as an adjective, includes, “anything, without exception, that (i) a person does or would purchase, lease (as lessee), or receive and normally use for personal, household, or family purposes.” D.C. Code § 28-3901(a)(2)(B). The Court notes that the CPPA’s definition of “goods and services” includes “any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit” and “consumer services or all types.” *Id.* § 28-3901(a)(7). Case law has also established that loans such as those in the instant case are considered consumer credit transactions under the consumer protection laws of the District. See *DeBerry v. First Gov. Mortg. & Inv’s Corp.*, 743 A.2d 699 (D.C. 1999). Moreover, the D.C.

Council specifically amended the CPPA in the 2007, via the Payday Loan Consumer Protection Amendment Act of 2007 which expressly made violation of the District's usury law an unlawful practice under the CPPA. *See* D.C. Code § 28-3904 (ff). As loans such as those offered by Western Sky are considered consumer credit transactions under the District's consumer protection laws, and the Complaint includes sufficient facts to support the claim that the loans at issue are consumer credit transactions, the claim survives.

Elements of "debt collector" and "debt collection"

Defendants argue that the District failed to sufficiently plead the elements necessary to establish that they acted as a "debt collector" or performed "debt collection." Def. Mot. to Dismiss 10. The Court finds that the Amended Complaint alleges that by making telephone calls to consumers, making automatic payments from consumer bank accounts, and servicing and collecting on the loans from consumers, the Defendants are acting as debt collectors performing debt collection. *See* D.C. Code § 28-3814(2-3); Am. Compl. ¶¶ 5-6, 14-17. Under the pleading standard set forth in *Twombly*, 550 U.S. at 555-56, the Court concludes that the District has properly raised a right to relief above the speculative level such that the motion to dismiss shall be denied.

Choice of Law

Defendants ask the Court to dismiss the Complaint as the loan agreements choice-of-law provisions compel application of Cheyenne River Sioux Tribe law. Mot to Dismiss at 15. However, Plaintiff's Complaint pleads sufficient facts at this stage to support the claim that many relevant transactions with consumers took place in the District, including the allegation that the loans themselves were made over the internet with District consumers, that after consumers electronically executed the loan agreements, Western Sky deposited the proceeds of

the loan into District consumers' bank accounts, and finally, that Defendants withdrew payments automatically from the same bank accounts into which the funds were deposited. Compl. ¶¶ 13-14. The Court concludes that the factual allegations in the Complaint are enough to raise a right to relief above the speculative level such that Defendants' Motion to Dismiss shall be denied.

Accordingly, it is this 11th day of July, 2016, hereby

ORDERED, that Defendant's *Motion to Dismiss Plaintiff's First Amended Complaint* is **DENIED**; it is further

ORDERED, that the stay on discovery, entered on June 13, 2016 by consent of the parties, is hereby LIFTED. The parties shall abide by the following schedule:

Exchange List of Fact Witnesses	September 9, 2016
Proponent's Rule 26(a)(2(b) Report	September 16, 2016
Opponent's Rule 26(a)(2)(b) Report	October 7, 2016
Discovery Request	October 21, 2016
Filing Motions	November 25, 2016
ADR	February 7, 2017 at 11:00 a.m.
Pretrial Conference	To be set upon completion of ADR.

SO ORDERED.



Jennifer A. Di Toro
Associate Judge

Copies to:

Attorney General Karl A. Racine, Esq.
Assistant Attorney General Richard Rodriguez, Esq.
E-served via CaseFilXpress
Counsel for Plaintiff

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EXHIBIT 4

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No.: 2018 CA 008715 B

DECLARATION OF MARTA M. PARAVANO

I, Marta M. Paravano, declare as follows:

1. I am the Director of Practice Administration and Practice Technology at the Office of the Attorney General (OAG) for the District of Columbia. My business address at the Office of the Attorney General is 441 Fourth Street, NW, 11th Floor, Washington, DC 20001.
2. As part of my job responsibilities at OAG, I supervise the electronic discovery procedures undertaken by the office either in response to discovery requests in cases that are in litigation or in response to subpoenas issued in connection with the office's investigations. I am also the contracting officer for e-discovery matters and I manage our ongoing relationship with our e-discovery vendor, Leidos.
3. In response to OAG's March 20, 2018 subpoena for documents and information, Facebook, Inc. (Facebook) made a number of document productions, including one on August 3, 2018, which included documents Bates numbered FB-CA-DCAG-00049363 – FB-CA-DCAG-00063400. The August 3, 2018, production included images of the documents, as well as, their native format versions.
4. Attached as Attachment A is a true and correct copy of document Bates numbered

FB-CA-DCAG-00050485 – FB-CA-DCAG-00050490.

5. Attached as Attachment B is a true and correct copy of the native version of the same document.

I declare under penalty of perjury that the foregoing is true and correct.

Marta M. Paravano

MARTA M. PARAVANO

Director of Practice Administration and Practice Technology
Office of the Attorney General for the District of Columbia

3/1/2019

DATED

ATTACHMENT A

[Document provided *in camera* to Chambers]

ATTACHMENT B

[Document provided *in camera* to Chambers]